1951.

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File No. S. Belgaum 4/51

Legal DEPARTMENT

A BRANCH

Subject:— Suits Belgaum

In the Court of the Civil Judge (S.D.)
C.S. No. 357/51 (Old C.S. No. 38/49)
Malhavrao Harisharao Deshpande
and another } - Plffs.

Vs.

The State of Bombay Deft.

For a declaration that the Plffs are entitled to all the revenues, rents and any other sums collected by the State Officers in the year of grants and subsequent years from the villages of Chandur, Manjikatti, Kedmur and Balekundri

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S. Belgaum 4/51

File No.

Std. Sectt. Slip 24-B

S. Bel. 4/51

C O N T E N T S.

Legal Department File No. S. Bel. 4/51

Sr.No.	R.I./O.No.	Subject	Pages.

Suits Belgaum.

C. S No 357 of 1951.

Madhavrao Hariharrao Deshpande

Vs.

State of Bombay.

Re: For a declaration that the plffs. are entitled to all the revenues, rents and any other sums collected by the state officers in the year of grants and subsequent years from the villages of ~~Chandur~~ Chandur, Mavinkatti, Kendur and Balekundri.

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Reg. o.3 No. 38 of 1949.

In the Court of the Civil Judge, Belgaum.

1. Madhavarao Hariharr Deshapande, Astekar Inamadar, Brahmin, age 48, occ, Land Lord, resident Shahapur

2. Virupax Konher Deshapande, Inamadar, Brahmin, age, 28 occ: Land-holder, residing at Sulebhavi taluka Shahapur.

plaintiffs

Versus

1. The Sangli State represented by i-
   (a) Maharban Rao Bahadur Diwansaheb of Sangli, Sangli.
   (b) Meharban Chief Revenue Officer of the Sangli State, Snagli - The xxxx State having merged in the Province of Bombay since the suit- The Province of Bombay.

Defendants.

Claim Rs:-for Coourt fee

for Jurisdiction.

In this, the plff above named state as follows:-

1. Plaintiffs 1 and 2 are Bhavubands and are descendants of the late Annagi Narashinha Deshapande and late Konherao Annaji Desha-apnde who have bben described in documents also as Shahapurkars and as of Karyat Ankale, paragana Pacchapur and af his brother Naganath.

2. In consideration of services rendered to the State by the said Annaji Narashinha,(

His Highness the late Chintamanarao Pandurang(Chintamanarao - Appasaheb I), a previous Ruler of the Sangli State, granted to the said Annaji Narashinha, heraditary, the village of xxxxxxxxxx Kednur, Chandur and Mavinkatte, in the Shahapur Taluka, as Vatani Makta Kamavis( ) on the 25th day of the month March of the year Suru year 1230 (- 1829 A.D.), from thefollowing year. The amount of Rs. 1540-12-0 payble by the grantee in the r respect of the said three villages of Chandur, Kednur and Mavin - katti was fixed at the amount collected in the year.

the grantee was not to be asked to make any additional payments. The order of the grantxx was issued inthe form of a letter addressed to the mamlatdar of Shahapur, who was further ordered to prepare and keep for his xxxxdx record a copy of the grant and return the origional to the grantee. The sadd three villages were to be handed over to the managment of the grantee(

). By the said grant, which was of a permanant character, the said Annaji Narashinha and his sucessor-in-title were entitled to collect the revenues of the said three villages and liable to pay annually into the state treasury a fixed sum of Rs. 1540-12-0 only without being liable to be called upon to pay anything in axcess of thesaid amount. The grantee and his sucessors-in-title were entitled to all increments in the revenue collected. They were constituted the owner of and were entitled to all therevenues from the said villages, derived in any form whatsoever.The grantees were liable to pay the said amount of Rs. 1540-12-0 per year, irrespective whether the recoveries were short or excess thereof.

3. In consideration of the services rendered to the state by the said Konherao Annaji, mantioned in para 1 above, His Highness Chintamanrao Pandurang, a previous Ruler of the Sangli State, granted to the said Konherao Annagi, herditorry, the village of Balekundri-Khurd in the Shahapur Taluka as Vatani Makta Kamayishi from dfe the grant, by a grant dated 30th Jilked of the Fasli year 1249 corresponding to 1838-49 A.D. By its term the said grantee was entitled to collect all the revenues of the said villages of Balekundri-Khurd and was to pay th the state in the Shahapur Taluka treadury, a fixed sumof Rs. 1525/- per year. The grant was hereditary(and has been expressly described to be so, the sucessors also being entitled to collect the revenues similarly and liable to pay annually into the Shahpur Treasury a fixed

sum of Rs. 1525/- only. The grantees were entitled to all increments in the revenues and nothing in excess of the said stipulated amount of Rs. 1525/- was to be demanded from the They were consituted the owners of, and were entitled, to all the revenues from the said village, whether due in the form of agricultural or non-agricultural assessments, ground rents or in any other form whatsoever derived from the said village. The grantees are liable to pay Rs. 1525/ per year, irrespective of the recoveries, short or in excess thereof.

1. His Highness the late Chintamanrao Appasaheb had also made a total grant of Rs. 2014/- for and to Konherao Annaji. Subsequently, on account of the service which he, konherao, had rendered in the matter of the investigature of the powers of the Ruler upon the late Shrimant Dhundiraj Chintaman and further on account of the proper advise goven to him from time to time in theterbulous times 1857 A.D. His late Highness Dhundiraj Chintaman confirmed and reiterated the said grant of Rs. 2014/- on 12th of Jilh of the Suru Year of 1260 corresponding to the year 1860-61 A.D. and directed that the amount was to be deducted from t annual payments which were to be made by the grantees into the Shahapur Treasury onaccount of the Makta village of - Balekundri Khurd and the other villages and pay the balance into the Shahpur Treasury.

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5. The aobve grants were adverted to sustainned, an furthered on subsequent occasions from time to time . They fianlly came before thepresent ruler of the State - His

His Highness the Rajasaheb who was graciosly pleased to order on 7-1-1939 as follows:-

Order.

Inam Javak No.187 of 1939,
Sangli, 5th Jan.1939.

The orders passed by Mr M.V.Joshi, - Administrator, Sangli, in his Vernaculer Endorsment No, M.J.3324, dated 27-1-39 should be given effect to.Necessary provision has already been made in the current year's budget (1348 Faslf) at 5 Land Revenue F fir paying the amount d due to Kamavisdar.

The Council of Administration has pointed out that under the terms of the lease, it is incumbent on the Kamavisdar to collect the revenue of the makta villages and pay the amount fixed by the lease into the Shahapur treasury on a date to be mutually agreed upon. the present practice, if it is not in accordance withthe terms of the lease in the respect, should be rectified.

C.A.Patwardhan.

Raja of Sangli..
7-1-39.

Effect was given to the liability portion of this order of His Highness by Raosaheb Mamlatdar of Shahapur by calling upon the plff by the notice dated 5-12-39 to pay into the Shahapur Treasury the amount payble under the Makta Kamavishi in respect of Balekundri-Khurd village without complying with enabling part of theorder for the collection of the revenus by the plff, and on the plff's objection, the case is kept since die.

6. In spite of the above order, and contravention of the terms of the said grants to the predecessors of the plffs, Raosaheb Mamlatdar of shahpur continues to collect as before, the recoveries in respect of the siad villages of Chandur, Mavinakatte, and Kadnur and Balekundri-Khurd.

7. By the terms of the grants detailed above, the grantee and his successors-in title have become entitled to:-

(a) All the revenues collected from the said villages

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of Chandur, Mavinaktte, Kednur and Balekundri-Khurd in the Shahapur Taluka of the Sangli State whether arising out of the xgix agricultural or non-agricultural assessments as collected by the state officers in the year of the grant and in subsequent years whether enhanced or not in respect of the Inam or Inam-khalsa lands in the said villages.

(b) all rents due and collected in respect of villages sites or of lands out side the village site, cultivated, uncultiva-ted or waste from any other source whatsoever;

(c) any other sums - major or minor - covered by the said grant and as as at present detailed in Tharav.band Register and recoverable though the village officers. ever since the grant all these recoveries are being made by the State - through Saosaheb Mamlatdar of Shahapur Taluka by the agency of the village officers of the said villages.

5. The plffs, therefore, are entitled to have an account taken of all such collections made by the state through its officers as detailed in the proceedings paragraph from the dates of the grants, viz. 1829 and 1848-49 A.D., to the date of the suit and to all the amounts that may be found due at the foot of accounts so ta en after giving credit every year to the plffs for Rs. 2,014/-. detailed in paras 2 and 3 - above and after debiting Rs. 1,540-12-0 and Rs. 1525/- resp. every year due from the plffs to the state as per terms of the grants detailed above. One account may be taken in r-respect of the maka grants of Balekundri-Khurd, and of Chandur, Mavinkatte and Kednur villages. In view of the circumstances of the case, it has become necessary to ask for a declaration of the plff's right to collect the the sai revenues detailed above thriugh the village officers of Chandur, Mavinkatte and Kednur and Balekundri who should be declared to be the servants of the plffs, and for an - injunction to the defts not to henceforth themselves collect the said revenues detailed above, but to direct the vill officers of the said villages of Chandur, Mavinkatte, Kednur and Balekundri-Khurd to hence forth make all

every year into the hands of the plffs the - collections so made.

The cause of action arose in Nov.1945 when a demand was made in this behalf, and accounts were not rendered which is to be taken as refusal to render accounts.

10. The suit being for a declaration and a consequental relief and accounts, the value of subject matter of the suit for the purposes of declaration and injunction is Rs.5/- and for the purposes of accounts is Rs.5/- as the plffs are not in a position to state the amount that may be found due them. The balance of the court-fee will be paid when the amount will be ascertained. Court-fee stamp of the value of Rs. 6-12-0 is presented to-day, Rs.6-4-0 for injunction and Rs.0-8-0 accounts.

11. The villages of Chandur, Mavinkatte and Kednur and Balekundri-Khurd is respect of which the Makta-Kamavish rights have been claimed are situate in the Shahapur Talukas within the jurisdiction of this court; the amount also has to be paid in the Shahapur Treasury. The suit being against the State, this court has jurisdiction to try this suit.

12. The plffs 1 and 2 are the direct successors-in-title of the origional grantee - Annaji Narshinha and Konberaroa Annaji Deshapande. The plff No.1 is one of the two Khatedars in State Records in respect of the grant and plff No.2 is the only son of the other Khatedar in State Records Konher Virupax, who died on 28-10-1944. The plffs are thus entitled to institute this suit. The deft Sangli State is represented by Meherbah the Diwansaheb of the State, and Meherban the Chief Revenue Officer of the Suit. The state has merged in the Bombay Presidency in the Indian Dominion hence the Province of Bombay is brought on record.

13. A notice dated 9-1-1946, is required by law, was given to the deft.

14. The plffs claim as follows:-

1. For a declaration that they are hereditary entitled to:-

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(a) all the revenue collected from the villages of Chandur, Mavinakatte and Kednur and Balekundri-Khurd in the Shahapur Taluka whether arsing out of the agricultural or non-agricultural assessments collected by the State Officers in the year of the grant and in subsequent years whether enhanced or not, in respect of Inam or Inam-Khalsa lands in the said villages.

(b) all the rents due and similarly collected in the respect of the village-site of the said vilaages Chandur, Mavinkatte Kudnur and Balekundri- Khurd cultivated or non-cultivated or waste, or from any other source whatsoever.

(c) any other sum, major or minor covered by the said grant and as at present detailed in the Tharav-Band Register and similarly recovered through the village officers of the said villages of Chandur, Mavinakatte, Kudnur and Balekundri-Khurd and realised by the state ever since the date of the grant - to the date of the suit, through Rosahab Mamlatdar of Shahapur Taluka by the agency of the village officers of the said villages.

and (d) a declaration that the village officers of the villages of Chandur and Mavinkatte and Kednur and Balekundri-Khurd are the servants of the plffs and those claiming under and through the by virtue of the said grants and an injunction to the defts not to henceforth themselves to collect the said revenues detailed above and direct the village officers of the said villages of Chandur, Mavinaktte, Kednur andof Balekundri-Khurd to hence forth recover the same for them and on behlaf of the plffs, and pay the same into the hands of the plffs andtheir sucessors-in-title.

(20 To have an account taken of all such collections mentioned in sub-para 1 (a,b,c) above so made by the officers of the state through the village officers of Chandur, Mavinakatte and Kednur and Balekundri-Kurd from the year of the grants viz, 1829 and 1848-49 A.D. respectively, to the end of suit after giving additional credit to the plffs every year of for Rs. 2014/- detailed in para 4 above, and debiting to every year Rs. 1540-12-0 and Rs.1525/- resp. as detaile

above; and amounts that may be found due at the foot of such accounts so taken be awarded to them with interest at 6 per cent per annum on the amountdue to them.

(3) All costs of this suit.

(4) Such otherrelief as are ar:novable to said arise put of the circumstances of the case and the content ons of the deft.

sd.
(Applicant)

Presented br'
sd. M.H.Godabole
15-6-46.

Shahapur
Dated

In the court of the District Judge and First Class Subjudge at Sangli.

...

1. Madhavrao Lalharrao Deshpande, Ashtekar Inamdar, Brahmin, age, 48, Occupation: Land-lord, residin at Shahapur.
2. Virupax Konher Deshpande, Inamdar Brahmin, age: 28, Occupation Landholder, residing at Sulebhavi, taluka Sha[illegible]. } Plaintiffs.

Versus.

1. The Sangli State represented by:
   (a) Meherban Rao Bahadur Diwansaheb of Sangli;
   ((b) Meherban Chief Revenue Officer, of the Sangli State, Sangli. } Defendents.

Claim Rs. for Court fee for jursidiction: } Rs.18/-

In this, the pltffs. above-named state as follows:-

1. Pltffs.1 & 2 are Bhaubands & are descendants of the late Annaji Narsinha Deshpande & late Konherrao Annaji Deshpande who have been described in documents also as Shahapurkars and as of Karyat Ankale, Paragana Pachhapur and of his brother Raganath.

2. In consideration of services rendered to the State by the said Annaji Narasinha, [illegible] His Highness the late Chintamanrao Pandurang (Chintamanrao Appasahebi), a previous Ruler of the Sangli State, granted to the said Annaji Narasinha, hereditarily, the villages of Kednur, Chandur, & Navinkatte, in the Shahapur taluka as Vatani Makta Kamavis [illegible] on the 25th day of the month March of the Suru year 1230(= 1829 A.D.), from the following year. The amount of Rs.1540-12-0 payable by the grantee in respect of the said three villages of [illegible] was fixed at the amount collected in the year [illegible]

The grantee was not to be asked to make any additional payments. The order of grant was issued in the form of a letter addressed to the Namr. of Shahapur, who was further ordered to prepare & keep for his record a copy of the grant & return the original to the grantee. The said three villages were to be handed over to the management of the grantee( ). By the said grant, which was a permanent & hereditary character, the said Annaji Narasinha and his successors-in-title were entitled to collect the revenues of the said three villages of and liable to pay annually into the State Try. a fixed sum of Rs.1540-12-0, only without being liable to be called upon to pay anything in excess of the said amount. The grantee and his successors-in-title were entitled to all increments in the rev. collected. They were constituted the owners of & were entitled to all the Revenues from the said villages, derived in any form whatsoever. The grantees were liable to pay the said amount of Rs.1540-12-0 per year, irrespective whether the recoveries were short or in excess thereof.

3. In consideration of the services rendered to the State by the said Konherrao Annaji, mentioned in para 1 above, His Highness Chintamanrao Pandurang, a previous Ruler of the Sangli State granted to the said Konherrao Annaji, hereditarily, the village of Balekundri-Khurd in the Shahapur Tal. as "Vatani Makta Kamavishi( )from the year of the grant, bya grant dt.30th Jilkad of the Fasli year 1249 corresponding to 1848-1849 A.D. By its terms the said grantee was entitled to collect all the revenues of the said village of Balekundri-Khurd & was to pay to the State in the Shahapur Tal. Try., a fixed sum of Rs.1525/- per year. The grant was hereditary( ), and has been expressly described to be so,

so, ...
the successors also being entitled to collect the revenues similarly & liable to pay annually into the Shahapur Try. a fixed sum of R.1525/- only. The grantees were entitled to all increments in the revenues & nothing in excess of the said stipulated amount of R.1525/- was to be demanded from them. They were constituted the owners of, and were entitled, to all the revenues from the said villages, whether due in the form of agricultural or non-agrl.assessments, ground-rents or in any other form whatsoever derived from the said villages. The grantees are liable to pay .1525/- per year, irrespective of the recoveries, short or in excess thereof.

4. His Highness the late Chintamanrao Appasaheb had also made a total grant of Rs.2014/- for and to Konherrao Annaji. Subsequently, on account of the services which he, Konherrao, had rendered in the matter of the investigat--ure of the powers of the Ruler upon the late Shrimant Shun--diraj Chintaman and further on account of the proper advice given to him from time to time in the torbulous times of 1857 A.D., His Late Highness Shumsiraj Chintaman confirmed & re-iterated the said grant of R.2014/- hereditarily on 12th of Jilhaj of the Suru year of 1250 corresponding to the year 1860-61 A.D., and directed that the amount was to be deducted from the annual payments which were to be made by the grantees into the Shahpru Try. on account of the Hakta Village of Bale--kundri-Khurd and other villages and pay the balance into the Shahapur Try.(

5. The above grants were adverted to, sustained & furthered on subsequent occasions from time to time. They finally came before the present Rule of the State-His Highness the Raja--saheb who was graciously pleased to order on 7-1-1939 as follows:-

O r d e r.

Inam Javak.No.187 of 1939.
Sangli, 5th January 1939.

The orders passed by Sir.M.V.Joshi, Administrator, Sangli, in his Vernacular Endt.No.M.J.3324, dt.27-1-31, should be given effect to. Necessary provision has already been made in the current year's budget (1348 Fasli) at 5 Land Rev.s for pay--ing the amount due to Kamavisdar.

The Council of Administration has pointed out that under the terms of the lease, it is incumbent on the Kamavisdar to collect the rev. of the Hakta villages & pay the amount fixed by the lease into the Shahapur Try. on a date to be mtually agreed upon. The present practice, if it is not in accordance with the terms of the lease in this respect, should be rectified.

C.A.Pattardhan.
Raja of Sangli. 7-1-39.

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Effect was given to the liability portion of thi
of High Highness's by Raosaheb Amr.of Shahapur by calli
upon the pltff.No.1,by the notice dt.25-12-39,to pay i
Shahapur Try.the amount payable under the Kanta Kamavis
)in respect of Balekundri-Khurd village,with
complying with the enabling part of the order for the c
-ion of the Rev.by the pltff.,and on the pltffs' objecti
the case is kept sine die.

6. In spite of the above order,and in contravention of terms of the said grants to the predecessors of the Pltffs, RaoSaheb Amr.of Shahapur continues to collector,as before, the recoveries in respect of the said villages of Chandur, Mavinkatte and Kednur and Balekundri-Khurd.

7. By the terms of the grants detailed above,the grantee & his successors-in-title have become entitled to:-
(a) All the revenues collected from the said villages of Chandur,Mavinkatte,Kednur and Balekundri-Khurd in the Shahapur Tal.of the Sangli state whether arising out of the agrl.or non-agrl.assessments as collected by the State officers in the year of the grant & in subsequent years whether enchanced or not in respect of the Inam or Inak-Khalsa lands in the said villages;
(b) all rents and profits due & collected in respect of vil-lage-sites or of lands outside the village-site,cultivated, uncultivated,waste,forest or from any other source whatsoever;
(c) Any other sums: major or minor;- covered by the said grant & as at present detailed in Kharav-band ( )Regr. & recoverable through the VOs. Ever since the grant all these recoveries are being made by the State through Raosaheb Amr. of Shahapur tal.by the agency of the VOs of the said villages.

8. The Pltffs.therefore,are entitled to have an account taken of all such collections made by the State through its officers as detailed in the proceeding paragraph from the dates of the grants,viz: 1829 and 1848-49,A.D. to the date of suit & to all the amounts that may be found due at the foot of accounts so taken after giving credit every year to the Pltffs.for Rs.211/- detailed in paras 2 and 3 above and after debiting Rs.1540-12-0 and Rs.152/-respectively,every year due from the Pltffs.to the state as per terms of the grants detailed above.One account may be taken in respect of the Maka grants of Bale-kundri-Khurd,and of Chndur,Mavinkatta & Kednur villages.In view of the circumstances of the case,it has become necessary to ask for a declaration of the Pltff's right to collect the said revenues detailed above through the VOs of ~~Chandur~~ Chandur,Mavinkatte & Kednur and Balekundri-Khurd who should be declared to be the servants of the pltffs,and for an injuction to the defts.not to henceforth themselves collect the said revenues detailed above,but to direct the VOs of the said villages of Chandur,Mavinkatte & Kednur & of the Balekundri-Khurd to henceforth make all the said recoveries for and on behalf of the Pltffs,and pay every year into the hands of the Pltffs,the collections so made.

9. The cause of action ~~arose~~ arose in Nov.1945 when a demand was made in this behalf,and accounts were not rendered which is to be taken as refusal to render accounts.

10. The suit being for a declaration & a consequential re-lief & accounts,the value of the subject-matter of the suit for the purposes of declaration & injuction is Rs.5/- and for the purposes of accounts Rs.5/- as the pltffs.are not in a position to state the amount that may be found due to them.The balance of the court-fee will be paid when the amount will be ascertained. Court fee stamp of the value of Rs.6-12-0 is presented to-day, Rs.6-4-0 for injuction and Rs.~~0~~0-8-0 for accounts.

11. The Villages of Chandur,Mavinkatte,and Kednur and Balekundri-Khurd,in respect of which the Maka-dar rights have been claimed are situate in ~~the~~ within the jurisdiction of this Court

to . . .
be paid in the Chahapur Dry. The suit being against the state, this court has jurisdiction to try this suit.

13. The pltffs.1 & 2 are the direct successors-in-title of the original grantees-Annaji Narasinha and Konherrao Annaji Deshpande. The Pltf.No.1 is one of the two Khatedars in state records in respect of the grant & Pltff.2 is the only son of the other Khatedar in state records Konher Virupax, who died on 26-1-1914. The Pltffs are thus entitled to institute this suit. The defts. Sangli state is represented by Meherban the Diwanshab of the state, and Meherban the Chief Rev. Officer of the state.

15. A notice, dt.9-1-46, as required by law, was given to the defts:-

14. The Pltffs, claim as follows:-

(1) for a declaration that they are hereditarily entitled to:-

(a) all the revenues collected from the villages of Chandur, Kavinkatte and Kednur and of Dalekundri-Khurd, in the Chahapur Tal. whether arising out of the agrl. or non-agrl. assessments collected by the State officers in the year of the grant and in subsequent years, whether enhanced or not, in respect of Inam or Inam-Khalsa lands in the said villages.

(b) all the rents and profits due & similarly collectable in respect of the village-sites or lands on and the village-sites of the said villages of Chandur, Kavinkatte and Kednur & Dalekundri-Khurd cultivated, uncultivated, waste, forests, of from any other source whatsoever;

(c) any other sum, major or minor covered by the said grant as at present detailed in the Amarav-bhanu, Appr. ( ) and similarly recovered through the VOs of the said villages of Chandur, Kavinkatte, & Kednur and of Dalekundri-Khurd and realised by the Govt. ever since the date of the grant to the date of the suit through Hasansab Hasr. of Chahapur Tal. by the agency of the VOs of the said villages;
and (d) a declaration that the VOs of the villages of Chandur, Kavinkatte and Kednur and Dalekundri-Khurd, are the servants of the Pltffs, and those claiming under & through them by virtue of the said grants, and an injunction to the dfts. not to hereafter themselves collect the said revenues detailed above and to direct the VOs of the said villages of Chandur, Kavinkatte and Kednur and of Dalekundri-Khurd to henceforth recover the same for & on behalf of the pltffs, and pay the same into the hands of the pltffs. & their successors-in-title.

(e) To have an account taken of all such collections mentioned in sub-para 1(a, b, & c) above so that by the officers of the State through the VOs of Chandur, Kavinkatte & Kednur & of Dalekundri-Khurd from the year of the grants, viz: 1829 & 1848-49 &c... respectively, to the end of suit after giving addl. credit to the pltffs. every year for Rs.2014/- detailed in para 4 above, & debiting to them every year Rs.1540-12-0 & Rs.1525/- respectively as detailed above; & amounts that may be found due at the foot of such accounts so taken be awarded to them with interest at 6 % per annum on the amount due to them.
(f) All the costs of this suit.
(g) Such other reliefs as the circumstances to arise out of the circumstances of the case & the contentions of the Dfts.

It is prayed that a decree be passed in favour of the Pltffs. for the above reliefs.

Documents relevant at this stage of the suit are [redacted] kept herewith. Those that may be found [redacted] contentions of the defts. will be

later on. . . .

Shahapur.
Dated 11-6-46.

We, (1) Madharao Hariharrao Ashtekar, Inamdar, and (2) Virupax Konheri Deshpande, Inamdar, the Plaintiffs above-named, do hereby declare that what has been stated above, is true according to our own information and information received and believed by us to be true.

Shahapur.
Dated 11-6-46.

Belgaum Civil Suit No.38 of 1949.

This is a suit for a declaration that the plaintiffs are entitled to all the revenues, rents and any other sums collected by the State officers in the year of grants and subsequent years from the villages of Chandur, Mavinkatti, Kednur and Balekundri and for injunction and accounts.

The suit was originally filed in the Court of First Class Sub-Judge, Sangli on 15-6-46. The written statement seems to have been filed by the Sangli State but it is not in the record of the case. After merger of the Sangli State, the State of Bombay is impleaded in the suit.

Nothing can be said on merits, as the record of the case is not available. However, the suit is defensible on technical grounds. The defence of the suit may be sanctioned on the lines of the accompanying brief.

[as per direction, the papers have been called for from the Collector, Belgaum]
ms 26/9

no papers are available since collector's letter dated 12th Nov.

ms 9
18/11

Addl. Solicitor :—

I think the following contention should be added :—

(1) That the State adopts all the contentions raised by the Sangli State on the merits of the suit already filed

(2) The agreement of merger does not provide for the liability of the Govt for such acts.

20/11

Submitted
The first ground, as directed is added as ground no 3 in the grounds of Defence.
The second ground is there already as ground no 2 of the grounds of Defence.

21/11

Addl Solicitor -
approved
21/11

Secy R.D. 22/11

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
22 NOV 1950

No. 16387

17 37

In the Court of Civil Judge, Senior Division at Belgaum.

Suit No. 38 of 1949.

1. Madhavrao Harihar Deshapande and others - - - - - - - - Plaintiff

Vs.

1. The Sangli State - since marged- Province of Bombay - Defentant

Herein the Written Statement on behalf of defendant - the State of Bombay is as follows :-

1. The defendant denies the plaintiff's suit in toto.

2. The suit is barred under section 4(f) of the Revenue Jurisdiction Act, since the plaintiff's suit relates to the payment of the Land Revenues of the Inam Villages.

3. Assuming that plaintiffs' have a cause of action against the Government of the Sangli State, this defendant the successor of the Sangli State, cannot be sued in respect of the acts committed by the former Government. The plaintiffs have therefore, no right to bring this suit against the defendant - Bombay State, unless under the agreement of merger between the two states, the States' liability for such acts has been undertaken by this Government. No such liability has been undertaken or accepted by this defendant - Bombay State.

4. Without prejudice to the above contentions this defendant adopts all the contentions raised by the Sangli Government on merits by their Written Statement already filed.

For these reasons, the suit should be dismissed with costs.

Belgaum.

District Government Pleader,
Belgaum.

I, District Government Pleader, Belgaum, do hereby solembly affirm that what is stated in the above mentioned paras from 1 to 4 is true to the best of my information obtained and believed to be true.

Belgaum.

District Government Pleader,
Belgaum.

O.S.No. 35 of 1946. 19 41

In the Court of Joint District Judge, Sangli

1. Madhavarao Hindurao Deshapande and others. Plffs.

Vs.

1. The Sangli State represented by:-
   a) RaoBahaddaru Dewansahab, of Sangli,
   b) Cheif Revenue Officer, Sangli State, Sangli .. ... Defts.

Claim Rs.18/-

Herein the Written Statement of Deft 1 (a) is as follows:-

1. That the suit is untenable and the remedy of the plffs is misconcieved. No such suit as is brought is tenable in law nor the reliefs sought for cannot be granted.

2. That the defts do not admit any of the allegations made in the plaint.

3. That all the shares interested in the suit claim being not parties, the suit is not tenable.

4. That the suit barred under S.4 (a) para first of the Revenue Jurisdiction Act because no suit against Govt. has i in respect watan property or claims against Govt.relating to lands under the 4th paragraph of the same sub-section.

5. That the suit is barred under s.4(c) of the same Act because no suit can be brought against Govt. to say that plffs are entitled to collect the land revenue of any villages nor can any declaration or injurinction can be granted in that behalf.

6. That the suit is barred under S. 4(f) of the same Act because no suit can be brought against Govt. claiming to hold any land wholly or partially free from assessment of alnd Revenue or to receive payments cahrged or ar payable out of the ~~x~~ land revenue or respecting the occupation to

of waste or vacant land belonging to Govt.

7. That the alleged grants on which plffs rely do not give them any right to claim the reliefs based on those grants. That they are ajdid grants. They are to be continued as long as Govt. wishes to continue. The nature being such no rights can be claimed against Govt. to continue them. All the grants claimed by the plffs as foundation of their right are governed by tenant Rules published in Sangli Gazette dated 2-10-1940 and they have lapsed on the death of Keshavarao, the next surving son of Konher Annagi

8. That the villages of Kednur, Chandur and Mavinakatte are not vatan. They are Makta villages not of permanent grant. The villages are to be continued for the grantess till the life-time of the last surving son of Konher. That ceased to exists on the death of Keshavarao who is now dead. The three villages have lapsed to Govt. on the death of Kesharao.

9. That the grant of above three villages is governed by Tainant Rules. Their continuance entirely rests with His Highness the Rajesaheb of Sangli. No suit can lie for the purspose.

10. That the contentions raised in paragraphs 6,7,8 apply to also to the rights claimed in paragraph 3 of the plaint. For the same reasons the relief cannot be given to the plffs.

11. That as regards the claim to Cash allowance made in para 4 of the plaint, no suit can be brought against the Govt. Cash allowances and their continuance are entirely matters in the discration of His Highness. They are jadid Grants. The claim has lapsed to Govt. under Tainant Rules. So no suit can be brought to claim rights under a lapsed grant.

12. That as regards para 5 of the plaint the order of His Highness referred to therein the dated 7-1-1939 was passed when the Tainant of para 2,3,and 4 of the plaint were continuable.. They were complied with till 1943 and payments were made to the holders including the plff till that day. As all those -

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Tainants have lapsed since the death of Kesharao no == payments are made or can claimed. The other objections in the para are not correct, true or valid.

13. That as regards para 6 of the plaint no contravention of the terms of the grant were ever made. The plffs cannot claim to collect the revenues or administrer the villages. No such right can claimed in law. Govt. has every right - to administer the villages and collect the recoveries. It is a matter of administration by Gvot. and no - civil. remedy can be claimed to interefere with the right of Govt. under the law.

14. Without prejudice to the above contention and assuming without admiting that the plffs. have the right claimed in 6 para of the plaint, the answer to the allegations in the 7th paragraph of the plaint is as follows:-

As regards 7(a) plffs are grantees of land revenue only and are not entitled to non-agricultural assessment of any other Inam or Inam-Khata.

As regards 7(b and (c) none of these rights from part of the grant and plffs are not entitled to it. The Mamlatdar has the right and is the proper person to make the recoveries alleged.

15. That no cause of action has arisen to plffs against Govt. clim any of the reliefs in the plaint.

16. That as regards allegations in para 8 of the plaint as regards accounts, plffs have no right to claim accounts. No cause of actionhas accrued to plffs to ask for accounts. Govt is not liable to render accounts under the terms of any grants. In case of Makta-Kamavisdar grant no liability is incurred by Govt. to render accounts and no accounts can be claimed against them.

Even assuming that they can clim accounts, they cannot

claim accounts from 1892 or 1848 A.D. Such claim is barred by limitation. Pyaments being made according to Huzur order and accepted till 1943, no prior accouhts can be claimed. Morever no more payment than three past account can be climed. The alleged method of accounting is alos not correct.

17. That as regards allegation in para 8 as regards declaration and injunction, no declaration can be granted to the effect that the village officers of the villages .- mentioned are or can be servants of plffs nor a declaration that the plffs have the right to collect the revenues of - those villages. Taht no injunctions can be granted to restrain the defts from discharging the duties laid upon them by law, especially the Lnad Revenue Code.

18). That no injunction can be granted to compel the village offices to make the recoveries and hand them over - to plffs every year. They being not ~~proper~~ parties to the suit. Even if they were parties, no such injunction can be granted.

19. That no injunction to defts can be granted to restrain defts as that will be interfering with the public duties of the department of Govt. That is barred under s. 56(d) of the specific relief Act.

20. That is the injunction itself cannot be granted assuming it can be granted otherwise, under s.54(c), because pecuniary compensation can be ascertained and granted.

21. That regards allegation in para 12 of the plaint, the grants having lapsed or otherwise lawfully discontinued, plffs, though they be descedhts as alleged, cannot clim any right or reliefs made in the plaint.

22. That as reliefs claimed in para 14 being answered in previous paragraphs, for these reasons plffs cannot claim any of the reliefs nor can any relief be granted to them.

23. That the objections under the Revenue Jurisdiction Act, that no cause of action has accrued against Govt, and the Tainat has lapsed to Govt. and other preliminary legal objections should be heard and decided as preliminary proof of law.

For these reasons it is prayed that the suit of plffs the dismissed

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No. 140
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No. 1), ~~1950.~~
30 Jan. 1951

Belgaum
Subject:- Civil Suit No. 38 of 49

MEMORANDUM.

With reference to his letter No. 433 dated the 14th Dec 1950 forwarding a draft written statement in the suit noted above for approval, the District Government Pleader, is informed that two copies of the revised ~~approved~~ draft are forwarded herewith.

For ~~Remembrancer~~ of Legal Affairs.

To

The District Government Pleader, Belgaum

BM.
20.3.

Issued
CP
3/1

Subs for sig
3/1
Asstt

2547

Suits :

Belgaum.

For declaration that the plaintiffs are entitled to all the revenues, rents and any other sums collected by the State Officers in the year of grants and subsequent years from the villages of Chandur, Mavinkatti, Kednur and Balekundri.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 1025.

Bombay Castle, 16th January 1951.

Letter from the Collector of Belgaum, No. L.A.W. 872, dated the 12th July 1950—Forwarding the papers in the suit noted in the margin, and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.
(New C. S No 357 of 1951 / Old Civil Suit No. 38 of 1949.)

Madhavrao Hariharrao Deshpande and other ... Plaintiffs;

versus

The State of Bombay ... ... Defendant.

Memorandum to the District Government Pleader, Belgaum, No. 16633, dated the 27th November 1950—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

G. R. No. 1025, L. D., dated the 16th January 1951.

To

*The Revenue Department,
*The Collector of Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).

*With a copy of the brief.

No. of 1951.

Copy forwarded for information and guidance to

BELGAUM CIVIL SUIT No. 38 of 1949.

Chronological Statement of Facts.

1. This is a suit for a declaration that the plaintiffs are entitled to all the revenues, rents and any other sums, collected by the State Officers in the year of grants and in subsequent years from the villages of Chemdur, Mavinkatti, Kednur and Balekumdri-khurd in Shahapur Taluka, and further, that the village officers of the said villages are the servants of the plaintiffs by virtue of the terms of the grants; for an injunction restraining Government from collecting the above-mentioned sums, every year and for refunding of the recoveries, so made, after taking accounts of the said collections from the date of the grants to the end of this suit after giving credit to the plaintiffs every year for Rs. 2,014 as detailed in paragraph 4 of the plaint and debiting to them, every year, Rs. 1,540-12-0 and Rs. 1,525 respectively.

2. The villages of Kednur, Chandur, Mavinkatti were hereditarily granted, in 1829, as Vatan Makta Kamavisi, to the ancestor of the plaintiffs with a condition that the grantee was to pay annually unto the State Treasury a fixed sum of Rs. 1,540-12-0.

3. In 1848-49, another village, Balekundikhurd was granted hereditarily as Vatan Makta Kamavishi to the ancestor of the plaintiffs on condition that the grantee was to pay annually unto the State Treasury a fixed sum of Rs. 1,525.

4. In 1860-61 A. D. His late Highness Dhundiraj Chintaman, the ruler of Sangli confirmed and continued a previous, permanent and annual grant of Rs. 2,014 as "Dinner charges and Palanquin Saranjam" to the ancestor of the plaintiffs directing that the amount was to be deducted from the annual payments to be made by the grantee unto the State Treasury in respect of the above-mentioned villages.

5. In 1939, His Highness, the present ruler of Sangli State, passed, as the plaintiffs allege, the following order, in respect of these Inam villages :—

> "The orders passed by Sir N. V. Joshi, Administrator, Sangli, in his vernacular endorsement No. M. J. 3324, dated 27th January 1931 should be given effect to.....
>
> The Council of Administration has pointed out that under the terms of the lease, it is incumbent on the Kamavisdar to collect the revenue of the Makta villages and pay the amount fixed by the lease into the Shahapur Treasury on a date mutually agreed upon. The present practice, if it is not in terms of the lease in this respect, should be rectified."

6. In spite of this order, and the grants, the revenue officers of the Shahapur Taluka, annually recover, the revenues of the abovementioned villages, as before.

7. On 9th January 1946, the plaintiffs gave notice of suit under section 80 of the Civil Procedure Code to the Diwan and the Chief Revenue Officer of the Sangli State and on 15th June 1946 they filed this suit in the Court of the First Class Sub-Judge, Sangli. After merger, the suit is transferred to the Civil Judge, Senior Division, Belgaum.

Grounds of Defence.

1. *Bar of Revenue Jurisdiction Act.*—It should be contended that the plaintiffs' suit is barred by section 4(*f*) of the Revenue Jurisdiction Act. That section relates to claims against Government to receive payments charged on or payable out of the land revenue. The plaintiffs' suit relates to the payment of land revenues of the Inam villages. The suit is therefore barred under section 4 (*f*) of the Revenue Jurisdiction Act

2. Assuming that plaintiffs have a cause of action against the Government of Sangli State, it can still be contended that the successor Government cannot be sued in respect of the acts committed by the former Government. It is an established principle that upon a cession of territory an inhabitant of a ceded territory can make good in the Municipal Courts established by the new sovereign only such rights as that new sovereign has recognised and not the rights enjoyed under the rule of his predecessors. (Vajesingji *v.* Secretary of State 26 Bom. L.R. 1143 ; Sayad Asrar *v.* Darga Committee of Ajmer, 49 Bom. L.R. (p. 235). The plaintiffs have therefore no right to bring this action against the successor of the State unless under the agreement of merger between the two States the State's liability for such act has been undertaken by this Government.

3. The defendant adopts all the contentions raised by the Sangli Government on merits by the written statement already filed.

For these reasons it should be urged that the suit fails and should be dismissed with costs.

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In the Court of the Civil Judge, Senior Division,

Belgaum.

Regular Civil Suit No. 357 of 1951.

1. Madhavrao Hariharrao Deshpande, Ashtekar, Inamdar, Brahmin, Age 48, Occupation Land-holder, residing at Shahapur by his heirs

Shri R.G.Karguppikar.

1A. Naganath Madhavrao Deshpande of Shahapur Age 30.

1B. Vishwambhar MadhavraoDeshpande, residing at Pooña, Age 20 years.

2. Virupax Konher Deshpande, Inamdar, Brahmin, Age 28, Occupation land-holder, residing at Sulebhavi, taluka Shahapur.

Plffs.

Vs.

Sh: M.R.Patil. Dist.Govt.Pl

1. The State of Bombay.

18/- for court fee and Jurisdiction.

The plaintiffs sue to obtain a declaration that they are entitled to :

a). All the revenues collected from the villages of Chandur, Mavinkatte and Kednur and of Balekundri-Khurd in the Shahapur Taluka whether arising out of the agricultural or nonagricultural assessments collected by theSState officers in the year of the grant and in subsequent years whether enhanced or not,

b). All the rents and profits due and similarly collected in respect of the village-sites or lands outside the village-site of the villages of Chandur, Mavinkatte and Kednur and Balekundri-Khurd cultivated, uncultivated, waste, forests, or from any other source whatsoever;

(c). Any other sum, major or minor covered by the said grant and as at present detailed in the Tharav band Register and similarly recovered through the village officers of the said villages of Chandur, Mavinkatte and Kednur and of Balekundri-Khurd and realised by the State ever since the date of the grant to the date of the suit through Raosaheb Mamlatdar of Shahapur Taluka by the Agency of the village officers of the said villages and ;

(d). A declaration that the village officers of the villages of Chandur, Mavinkatte and Kednur and of Balekund--ri-Khurd are the servants of the plaintiffs, and those claiming under and through them by virtue of the said grants, and an injunction to the defendants not to hence--forth themselves collect the said revenues detailed above and to direct the village officers of the said villages of Chandur, Mavinkatte and Kednur and of Balekundri-Khurd to henceforth recover the same for and on behalf of the plaintiffs, and pay the same into the hands of the plaintiffs and their successors-in-title.

2. The plaintiffs also claim that account should be taken of all the collections made by the officers of the State through the village officers of Chandur, Mavinkatte and Kednur and of Balekundri-Khurd from the year of grants, i.e., 1829 and 1848-49 respectively to the end of the suit after giving additional credit to the plaintiffs every year for Rs 2014/- and debiting to them every year Rs 1540-12-0 and Rs 1525/-. They pray that the amounts that would be found due to them should be awarded to them with interest at 6 per cent together with costs of the suit.

3. The plaintiffs allegations are briefly these :-

Plaintiffs Nos.1 and 2 are bhaubands and are descend--ants of the late Annaji Narasinha Deshpande and late Konherrao Annaji Deshpande. In consideration of the services rendered to the Sangli State by Annaji Narsinha, a previous Ruler of the Sangli State, granted to Annaji Narsinha the villages of Kednur, Chandur and Mavinkatte as Vatani Makta Kamavis on 25-3-1829. By the said grant which was of a permanent and hereditary character, Annaji Narsinha and his successors-in-title were entitled to collect the revenues of the above three villages and were liable to pay annually into the State Treasury a fixed sum of Rs 1540-12-0. The grantees were entitled to all the revenues from the said villages.

4. In consideration of the services rendered to the State by Konherrao Annaji the then Ruler of the Sangli

State --

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State granted to Konherrao the village of Balekundri-Khurd as Vatani Makta Kamavishi, by a grant of the years 1848-49. The grantee was entitled to collect all the revenues of Balekundri--Khurd and was to pay to the State a fixed sum of Rs 1525/- per annum. The grantees were entitled to all the increments in the revenue of Balekundri-Khurd. The grantees were constituted the owners of the villages and were entitled to the revenues from the said village, whether due in the form of agricultural or non-agricultural assessments, ground-rents or in any other form whatsoever.

5. His Highness the late Chintamanrao Appasaheb had also made a total grant of Rs 2014/- for dinner charges and planquin Saranjam to Konherrao Annaji. The grant was confirmed further hereditarily in the year 1860-61 by his late Highness Dhundiraj Chintaman. He further directed that the amount of Rs 2014/- was to be deducted from the annual payment which were to be made by the grantees into the Shahapur Treasury on account of the Makta village of Balekundri-Khurd and other villages.

6. The above grants were adverted to and sustained and furthered on subsequent occasions from time to time. On 7-1-39 the Raja of Sangli ordered that the Kamavisdars should collect the revenues of the Makta villages and pay the amount fixed by the lease into the Shahapur Treasury. He also noted in the order that necessary provision was made in the current year's budget for paying the amount due to the Kamavisdar. Effect was given to this order by the Mamlatdar of Shahapur calling upon plaintiff No.1 by notice dated 5-12-1939 to pay into the Shahapur Treasury the amount payable under the Makta Kamavisi in respect of the Balekundri-Khurd village without complying with the enabling part of the order for the collection of the revenue by the plaintiff.

7. In spite of the above order, and in contravention of the terms of the said grant the Mamlatdar of Shahapur continues to collect as before the recoveries in respect of the suit villages. By the terms of the grant the plaintiffs have become entitled to all the revenues collected from the said villages and all rents and profits due and collected in respect of

village sites or of lands of outside the village sites and other sums major or minor covered by the said grant and as at present detailed in the Tharav-band Register.

8. The plaintiffs, therefore; are entitled to have an account taken of all such collections made by the State through its Officers from 1829 and 1848-49 upto the date of the suit. The plaintiffs are also entitled to a decla-ration as set out in para 1 above. They also claim an injunction restraining the defendant not to henceforth to collect the said revenues but to direct the village officers of the said villages of Chandur, Mavinkatte and Kednur and Balekundri-Khurd to henceforth make all the said recoveries for and on behalf of the plaintiffs and pay every year into the hands of the plaintiffs the collections so made. Plain-tiffs Nos.1 and 2 are direct successors-in-title of the original grantee, Annaji Narsinha and Konherrao Annaji. They are therefore, entitled to institute this suit.

9. The suit was originally filed in the Sangli Court. Defendant No.1(B) filed his written statement at Ex.19 contending as follows :- All the sharers interested in the suit claims not being parties, the suit is not tenable. The suit is barred under Sec. 4(a), 4(c) and 4(f) of the Revenue Jurisdiction Act. The alleged grants on which the plaintiffs rely do not give them to claim any reliefs based on these grants. The grants are jadid grants. They are to be continued as long as the Government wishes to continue. The grants claimed by the plaintiffs are governed by the Tainat rules published in the Sangli Gazettee dated 7-10-1940. The grants have lapsed on the death of Keshavrao, the next surviving son of Konherrao Annaji.

10. The villages of Kednur, Chandur and Mavinkatte are not Vatan. They are Makta villages. The villages are to be continued to the grantees till the life-time of the last surviving son of Konher. This ceased to exist on the death of Keshavrao. The three villages have lapsed to Government on the death of Keshavrao. The Tainat has lapsed to Govt.

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11. As regards the claim to cash allowance made in para 4 of the plaint no suit can be brought against the Government. Cash allowance and its continuance are entirely matters in the discretion of Their Highness. The claim has also lapsed to Government under Tainat Rules. The order dated 7-1-1959 was passed by His Highness when the Tainat referred to in paras 2, 3 and 4 of the plaint were continuable. Payments were made to the holders including the plaintiff till 1943. As all the Tainats have lapsed since the death of Keshavrao no payments are made or can be claimed.

12. The plaintiffs cannot claim to collect the revenues or administer the villages. No such right can be claimed in law. Government has every right to administer the villages and collect the recoveries.

13. The plaintiffs are grantees of land-revenue only and are not entitled to non-agricultural assessments of any other Inam or Inamkhata.. As regards the plaintiffs claim in paras 7(b) and 7(c) defendant No.1 submits that these rights do not form part of the grants and plaintiffs are not entitled to the reliefs claimed in paras 7(b) and 7(c). Plaintiffs have not right to claim accounts. Government is not liable to render accounts under the terms of any of the grants. In case of Makta Kamavisdar grants no liability incurred by the Government to render accounts and no accounts can be claimed against them. The claim for accounts from 1829 or 1848 is barred by limitation. Payments being made according to Huzur order and accepted till 1943, no prior accounts can be claimed. Moreover, no more payment than three years past account can be claimed.

14. No declaration can be granted to the village officers of the villages in suit are or can be the servants of the plaintiffs. The plaintiffs cannot get a declaration that they have the right to collect the revenues from these villages. No injunction can be granted as prayed for. This relief is barred under Section 56(i) of the Specific Relief Act. Injunction cannot be granted under Section 54(c) of the Specific Relief Act, because pecuniary compensation can be ascertained and granted. The plaintiffs are not entitled to

reliefs

relief and their suit should be dismissed with costs.

15. After merger the state of Bombay had been brought on record as the defendant. The State of Bombay adopts the contentions raised by the Sangli Government at Ex.19 and further contends by Ex.54 as follows: The suit is barred under Section 4(f) of the Revenue Jurisdiction Act. Assuming that plaintiffs have a cause of action against the Government of the Sangli State, the Bombay State being the successor of the Sangli State cannot be sued in respect of the acts committed by the former Government. The plaintiffs have, therefore, no right to bring this suit against the Bombay State unless under the agreement of merger between the two States the Sangli State's liability for such acts has been undertaken by the Bombay State. No such liability has been undertaken or accepted by the Bombay State. The suit, therefore, deserves to be dismissed with costs.

16. Issues for decision as per Ex.63 are :-

1. Do plaintiffs prove that they are entitled to the Vatani Makta Kamavishi of Kednur, Chandur and Mavinkatte as alleged in para 2 of the plaint ?
2. Do plaintiffs prove that they are entitled to the Vatani Makta Kamavishi of Balekundri as alleged in para 3 of the plaint ?
3. Do they prove the grant of Rs 2014/- for Bhojan Kharcha and Palki Saranjam as alleged in para 4 of the plaint ?
4. Is the suit barred under Section 4(a)(c) and (f) of the Revenue Jurisdiction Act as contended in paras 4 to 6 of Exh.No.19.?
5. Are the suit grants governed by the Tainat Rules of Sangli State ?
6. Have the alleged grants lapsed as contended in paras 8 to 10 of Ex. No.19 ?
7. Is the suit for cash allowances not tenable ?
8. Has the claim to cash allowances lapsed ?
9. Are the plaintiffs entitled to non-agricultural assessment of the suit villages ?

10. --

10. Are plaintiffs entitled to ask for accounts ? If so, for what period ?

11. Is the suit barred by limitation ?

12. Are plaintiffs entitled to the declaration and injunction sought ?

13. Is the State of Bombay liable for the suit claim ?

14. Is the suit bad for non-joinder of parties ?

15. What reliefs are plaintiffs entitled to ?

16. What order ?

17. My findings are:- 1. No. 2. No. 3. Yes. 4. Yes. 5. Yes. 6. No. 7. Not tenable. 8. No. 9. Does not survive - yes. 10. No. 11. No. 12. No. 13. No. 14. No. 15. Nil. 16. See order.

R E A S O N S.

18. Issues Nos. 1 to 3 and 13 will have to be considered together. The plaintiffs alleged that they are Vatani Makta Kamivisdars of villages, Kednur, Chandur Mavinkatte and Balekundri-Khurd. Ex.86 shows that Chintamanrao Pandurang, the Raja of Sangli, gave the Makta Kamavisi Vatan of the villages Chandur, Mavinkatte and Kednur to Annaji Narsinha Deshpande. It further shows that the Kamavisdars was to pay Rs 1540-12-0 per annum to the Sangli State and make vahiwat of the three villages. On these terms Annaji Narsinha was to make vahiwat of the three villages. The remaining revenue of the villages was to be pocketed by Annaji Narsinha. It is further clear from Ex.86 that if there was any excess in the income by the efforts of Annaji Narsinha that was to go to him.

18. Exs.84 and 85 show that the Makta Kamavisi of Balekundri-Khurd village was given to Konherrao Annaji by Chintaman Pandurang in 1848. The grantee was to pay Rs 1525/- into the Shahapur Treasury and make hereditory vahiwat of the village. He was to pocket the remaining revenue of the village. If there was any excess in the income as a result of the efforts of the grantee that excess was also to be pocketed by the grantee. Ex.87 shows that Dhundiraj Chintaman, the Raja of Sangli, made a further grant in favour of Konherrao Annaji Deshpande. The

recitals --

were Vatani Makta Kamavisi. The grantees were constituted the lessees of the villages and not the owners thereof. It was submitted before me that the plaintiffs should be held to be the owners of the villages as their allegation in the plaint that they were constituted owners has not been specifically controverted by the Sangli State. It may be noted here that the written statement of the Sangli State has been adopted by the State of Bombay. I do not think that that the omission should be construed as an admission of the plaintiffs claim. The fact that the plaintiffs were the lessees of the villages is quite clear from the order of the Raja of Sangli, which is produced at Ex.94 and which has been relied upon by the plaintiffs in their plaint. This order is referred to in para 5 of the plaint. It is alleged the Rajasaheb of Sangli was graciously pleased to make the order at ex.94 on 7-1-1939.

21. The order at Ex.94 is as follows:-

" The orders passed by Sir. M.V.Joshi, Administrator, Sangli, in his Vernacular Endorsement No. M.J.-3324, dated 27-1-31 should be given effect to, Necessary provisions has already been made in the current year's budget (1348 Fasli) at 5 Land Revenue F for paying the amount due to Kamavisdar.

The Council of Administration has pointed out that under the terms of the lease, it is incumbent on the Kamavisdar to collect the revenue of the Makta villages and pay the amount fixed by the lease into the Shahapur treasury on a date to be mutually agreed upon. The present practice, if it is not in accordance with the terms of the lease in this respect, should be rectified. ".

22. It is clear from the above order that the Raja of Sangli treated the plaintiffs as lessees of the villages in suit. He pointed out that it was incumbent on the Kamivisdar to collect the revenue of the Makta villages and to pay the amount fixed by the lease into the Shahapur treasury. It is thus clear that the plaintiffs are lessees of these villages. They were entitled to make vahiwat of the villages as long as they paid the lease amount into the Shahapur treasury.

I do --

I do not think that they were constituted the owners of the villages or the grantees of the land revenue. For their labour they were to pocket the excess amount that remained after paying Rs 3060-12-0 into the Shahapur treasury. The very term 'Makta' denotes a contract. The plaintiff describe themselves Vatani Makta Kamavis, viz., what they got under the grants was right to collect the land revenue of the villages and nothing more. It can be said that they were constituted village officers for the purposes of collect--ing the land revenue and were allowed to pocket the excess amount.

23. The grants of the above nature cannot be binding on the State of Bombay. The plaintiffs' pleader wants to rely upon (Tukaram Vs. Sujangir Guru) 8 Bombay 585. That suit related to possession of some Vatan lands. It was held that the lands in dispute were held by the Peishwas as trustees for the plaintiff and that the British Government continued to hold as trustees for the family of the plaintiffs. This ruling is not at all applicable to the facts of the present case. The ruling in 26 Bombay Law Reporter 1143 (Vajesingji Vs. Secretary of State) seems to be applicable to the case before me. The plaintiff in Vajesingji's case had brought the suit alleging that they were talukdars and proprietors of certain talukas. It was found that the talukadar was only a lease holder. It was further laid down as follows :- "Upon a treaty of keession, an inhabitant of the ceded territory can only make goo in the municipal Courts established by the new Sovereign such rights as that sovereign has recognised, and not the rights enjoyed under the rule of his predecessors, and is not entitled to approach the municipal Courts for enforcement of rights which, though stipulated for in the treaty, are only enforceable by the contracting powers". In the present suit the plaintiff wants to enforce their rights of Makta Kamavisdars of the suit villages against the State of Bombay. Such right cannot be enforced against the Bombay State. It has not

been --

been proved that at the time of the Merger, the State of Bombay agreed to continue these grants inclusive of the grants of Bhojan Kharcha and Palaki Saranjam to the plaintiffs. I am supported in this view by a ruling of the Privy Council reported in 49 Bombay Law Reporter 235 (Syed Asrar Ahmed Vs. The Durgah Committee). The head note of the above ruling is as follows : " The rights which the inhabitants of a State enjoyed against its former rulers may be recognised by the new Sovereign Power either by legislation or by agreement express or implied. The rule of law is applicable to an office like the Mutawalli of a shrine, to which material benefits appertain and which is within the disposition of the new Sovereign Power.". The plaintiffs claim the office of Makta Kamavis to which the emoluments are attached. In view of the above ruling the plaintiffs are not entitled to claim the suit reliefs against the State of Bombay. I, therefore, hold that the plaintiffs are not entitled to enforce the Makta Kamavisi Vatan in respect of the suit villages and also the right be given to them to deduct Rs 2014/- on account of Bhojan Kharcha and Palaki Saranjam against the State of Bombay. It is also not shown what is meant by Bhojan Kharcha and whether the plaintiffs have maintained a Palaki Saranjam. It is not clear whether the amounts are to be paid to the plaintiffs for their own dinners for feeding others. It is needness to peruse the matter further as the State of Bombay is not liable for these payments. I,therefore, hold that the suit for cash allowance is not tenable. The plaintiffs claim for accounts is also not tenable. As regards the cash allowance the plaintiffs could not claim any accounts. They should have paid court-fees and claimed the cash allowance due to them. No question of account-ing arises so far as the claim for cash allowance is concerned.

24. The grants in suit are governed by Tainat rules of the Sangli State dated 16th June 1910. A copy of these rules is produced at Ex.102. The grants in suit may be said to be Jadid grants. They have come into existance after 1819. It is in the discretion of the Raja whether to continue or discontinue these --

these grants. It is not shown that the grants have been resumed by the Sangli State. It was perfectly open to the Sovereign of the Sangli State to resume them. It is not proved that the grants have lapsed by the death of Keshavrao as alleged in paras 8 - 12 of Ex.19. Issue No.6 is, therefore, answered in the negative. ~~If it be held that the suit~~ For the same reasons issue No.8 is also answered in the negative. If it be held that the suit claim is enforcible against the State of Bombay the plaintiffs would be entitled also to non-agricultural assessments of the villages as under the grants they are entitled to get all the income of the villages.

25. There is no substance in the contention that the suit is bad for non-joinder of parties. It is not shown that other persons were necessary parties to this suit. Issue No.14 is, therefore, answered in the negative. It is the contention of defendant that the suit is barred under Sec.4(a), (c) and (f) of the Bombay Revenue Jurisdiction Act. The only contention pressed before me was that the suit is barred under Section 4(f). This contention seems to be correct. Section 4(f) prohibits a Civil Court from exercising jurisdiction relating to claims against Government to receive payments charged on or payable out of the land revenue. The plaintiffs want to claim a portion of the revenue of the suit villages. I have already pointed out that the plaintiffs are mere lease holders. The learned pleader for the plaintiffs contends by reference to 38 Bombay Law Reporter, 1339 (Secretary of State for India Vs. Narayanrao Vinchurkar) that the claim in suit is not barred under Section 4(f). That was a suit filed by a Saranjamdar to recover sums of ain chillar wrongly deducted by Government payable from the land revenue payable to him. It was laid down in the above case that clause (f) refers to claims against Government to receive payments payable out of the land revenue, that is, payable out of the land revenue which is itself payable to Government. This ruling can have no application to the facts of the present case. Here the Government or the Sangli --

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Sangli State had a paramount claim to the revenues of the suit village. The Deshpandes were given the lease to collect the land revenue and they were allowed to pocket the excess after paying a certain amount of the revenue to the Sangli State. The revenue was primarily payable to the Sangli State. The plaintiffs were only the agents for collection. The claim in this suit is clearly a claim to receive payments of land revenue. It is, therefore, barred under Section 4(f) of the Bombay Revenue Jurisdiction Act. The plaintiffs claim a declaration that the village officers who are collecting the land revenue should be declared to be their servants. I do not think that such a claim can be sustained. According to the terms of the leases it was incumbent on the plaintiff to collect the land revenue. Exs.84 to 86 do not show that the plaintiffs were simply to sit at home and get the monies from the Sangli State after the revenue had been collected by the State servants. I, therefore, hold that the plaintiffs are not entitled to any relief in this suit. If it be held that the plaintiffs are entitled to claim the amounts in respect of the suit villages then they will ~~have~~ be entitled to ask for accounts only for three years prior to the institution of the suit. The suit cannot be said to have become barred by limitation. It was filed in 1946. It is admitted by the Sangli State that the payments were made till 1943. The suit is governed by Article 120 of the Indian Limitation Act. The period of limitation is six years from the date of the right to sue accrues. The suit, is therefore, clearly in time. In view of my finding that the State of Bombay cannot be made liable for the suit claims the plaintiffs are not entitled to the declaration, injunction and accounts sought in this suit. I therefore, pass the following order:-

O R D E R.

Suit is dismissed. The plaintiffs do pay costs of the suit to defendant and bear their own costs.

19th February 1954.

Sd/-

Joint Civil Judge, S.D., Belgaum

Decree.

Exh. No. 104

In the Court of the Joint Civil Judge, S.D.,

at Belgaum. Reg. civil suit No 357/51.

1. Madhavrao Hariharrao Deshpande, Ashtekar Inamdar, Brahmin, age 48, occupation Land-holder, residing at Shahapur by his heirs:-

1A) Naganath Madhavrao Deshpande of Shahapur, age 30

1B) Vishwambhar Madhavrao Deshpande, residing at Poona, age 20 years.

2) Virupax Sonher Deshpande, Inamdar, Brahmin age 28, Occupation landholder, residing at Sulebhavi Taluka Shahapur.

Vs.

1. The State of Bombay Defendant.

Claim Rs. 18/- for Court fee and jurisdiction

suit filed on 15-6-1946 in Sangli Court.

Suit received in this Court after merger of State on 17-3-1949.

Suit registered on 13-7-1951 as ord. suit.

In this, the plaintiffs above-named state as follows:-

1. Plaintiffs 1 and 2 are Bhauban a and are descendants of the late Annaji Narsinha Deshpande and late Sonherrao Annaji Deshpande who have been described in documents also as Shaherurkars and as of Kasba Shahapur, Taluka Kachapur and of his brother Naganath.

2. In consideration of services rendered to the state by the said Annaji Narsinha (सदर निर्दे सरकार कामास उपयोगी जाणोन Via Nighoje Timlate (Shivtaramrao Pandurang (Shivtaman ao Ap asaheb I), a previous Ruler of La sangli state, granted to the said Annaji Narsinha, hereditarily, the villages of Kednur, Chandur and Navirkatte, in the Shahapur Taluka as Watani Mokta Kamavis (वतनी मक्ता कमावीस) on the 25th day of the month march of the Guru Year 1230 (± =1829 A.D.) from the following year. The amount o. Rs. 1540-12-0 payable by the grantee in respect of the said three villages or (चंदूर कनूर, सावीन कडे) was fixed at the amount collected in the year (सदरहू तीन गांव वतनी कमावीस सन समानीन उसल केरले पर्यंत पेशवे सावलमारून मक्ता करून दिले सदरचे पाजली हरयेकवीसी कमाल न करणे

The grantee was not to be called to make any additional payments. The order of grant was issued in the form of a letter addressed to the Mamlatdar of Shahapur, who was further ordered to prepare and keep for his record a copy of the grant and return the original to the grantee. The said three villages were to be handed over to the marriage end of the grantee (तरे सरदारचे तीन गांव मी ॥ ते तिन्हे पोटचे हवाली करणे व तुम्ही हातून वहिवाट घेत जाणे)

By the said grant, which was of a permanent and hereditary character, the said Annaji Narsinha and his successors-in-title were entitled to Collect the revenues of the said three villages of पेंढर कदवूर व मालेवाडी and ~~xhis~~ liable pay annually into the State Treasury of fixed sum of Rs. 1540-12-0 only without being liable to be called upon to pay anything in excess of the said amount. The grantee and his successors-in-title were entitled to all increments in the revenue collected. They were constituted the owners of and were entitled to all the revenues from the said villages, derived in any form whatsoever. The grantees were liable to pay the stud said amount of Rs. 1540-12-0 per year, irrespective whether the recoveries were short or in excess thereof.

3. In consideration of the services rendered to the State by the said Konherrao Annaji, mentioned in para 1 above, His Highness Chintamanrao Pandurang, a previous Ruler of the Sangli State, granted to the said Konherrao Annaji, hereditarily, the villages of Palsdundri-Khurd in the Shahapur Taluka as "Vatani Hakta Kanavishi (वतनी मक्ता कमावीसी) from the year of the grant, by a grant dated 30th Zilkad of the Fasli year 1249 corresponding to 1840-1840 A.D. By its terms the said grantee was entitled to collect all the revenues of the said village of Palekundri-Khurd and was to pay to the State in the Shahapur Taluka Treasury a fixed sum of Rs. 1525/- per year. The grant was hereditary (वतनी कमावीसी वंशपरंपरा तुम्हास करून दिली आहे) and has been expressly described to be so, the successors also being entitled to collect the revenues similarly and liable to pay annually into the Shahapur Treasury a fixed sum of Rs. 1525/- only. The grantees were entitled to all increments in the revenues and nothing in excess of the said stipulated

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amount of Rs. 1525/- was to be deducted from them. They were constituted the owners of, and were entitled to all the revenues from the said village, whether due in the form of agricultural or non-agricultural assessments, ground-rents or in any other form whatsoever derived from the said village. The grantees are liable to pay Rs. 1525/- per year, irrespective of the recoveries, short or in excess thereof.

4. His Highness the late Chintamanrao Appasaheb had also done a total grant of Rs. 2011/- for भोजनखर्च and पाटखर्चा आरंजाम to Konherrao Annaji,. Subsequently, on account of the services which he, Konherrao, had rendered in the matter of the investiture of the powers of the ruler upon the late Shrimant Phundiraj Chintaman and further on account of the proper advice given to him from time to time in the turbulous times of 1857 A.D., His late Highness Dhundiraj Chintaman confirmed and reiterated the said grant of Rs.2011/- hereditarily on 12th of Jilhej of the Suru Year of 1260 corresponding to the year 1860-61 A.D., and directed that the amount was to be deducted from the annual payments which were to be made by the grantees into the Shahapur Treasury on account of the Sakta village of Belekundri-Khurd and other villages and pay the balance into the Shahapur Treasury. (पैकीं कुलकर्णी वतनदार वगैरे सरकारचा सरांव पडून त्यांनी चोरट्या कामात तुमची मेहनत फार इमान १८५७ साली तुम्ही नेक सल्ला देऊन सदर मजकूर तुम्हांस मनांत आणून तीर्थरूप कैलासवासी आपा साहेबांनी भोजनखर्ची व ॥ रु बाराशेहेचे व पाटखर्ची सरंजामा व ॥ रु आठशेहे रुपये विससेहे गांवाचे नेमणूक चालवीत होते ते हल्ली तुमचे वंशपरंपरा नेमणूक करून दिली आहे तर सदरे बाकेकुंदी-खुर्द वगैरे मजकूर गांवचे साहाबाद ऐवज सरकारांत तुम्हांकडून येणे सा वो सदरहू वीससहे रुपये दरसाल वजा घेऊन बाकीचे शहापूर सुभेकडे देत जावे. ता १२ फीलेज ११ सीतेन मयातेन व आजचे बहुत काय लिहिणे लोक करावा हे आशीरवाद

1. The above grants were adverted to, substained and further

on subsequent occasions from time to time. They finally came before the present Ruler of the State - His Highness the Rajasaheb who was graciously pleased to order on 7-1-1939 as follows:-

Order.

Inam Javak No. 187 of 1939
Sangli, 8th January 1939

The orders passed by Shir M.V. Joshi, Administrator, Sangli, in his Vernacular Endorsement No. M.J.-3324, dated 27-1-31 should be given affect to. Necessary provision has already been made in the current year's budget (1348 Fasli) at 5 Land Revenue F for paying the amount due to Kamavisdar.

The Councilx of Administration has xxx pointed out that under the terms of the lease, it is incumbent on the Kamavisdar to collect the revenue of the Makta villages and pay the amount fixed by the lease into the Shahapur Treasury on a date to be mutually agreed upon. The present practice, if it is not in accordance with the terms of the lease in this respect, should be rectified.

C.A. Patwardhan
Raja of Sangli,
7-1-39

Effect was given to the liability portion of this xxx order of His Highness by Raosaheb Mamlatdar of Shahapur by calling upon the plaintiff No. 1, by the notice dated 5-12-1939 to pay into the Shahapur Treasury the amount payable under the Makta Kamavizi (मक्ता कमावीशी) in respect of Balekundri-Khurd village, without complying with the enabling parts of the order for the collection of the Revenue by the plaintiff, and on the plaintiff's objection, the case is kept sine die.

6. In spite of the above order and in contravention of the terms of the said grants to the predecessors of the Plffs Raosaheb Mamlatdar of Shahapur continues to collect as before, the recoveries in respect of the said villages of Chandur, Mavinkatta and Kednur and Balekundri-Khurd.

7. By the terms of the grants detailed above, the grantee and his successors-in-title have become entitled to:-

(a) all the revenues collected from the said villages of Chandur, Mavinkatte, Kednur and Balekundri-Khurd

in the Shahapur Taluka of the Sangli State whether arising out of the agricultural or non-agricultural assessments as collected by the State officers in the year of the grant and in subsequent years whether enchanced or not in respect of the Inam or Inam-Khalsa lands in the said villages.

(b) All rents and profits due and collected in respect of village-sites or of lands outside the village-sites, cultivated uncultivated, waste, forest or from any other source whatsoever

(c) any other sums - major or minor - covered by the said grant and as at present detailed in Tharav-band (ठरावबंद) Register and recoverable through the village officers. Ever since the grant all these recoveries are being made by the State through Raosaheb Mamlatdar of Shahapur Taluka by the agency of the village officers of the said villages.

8. The plaintiffs, therefore, are entitled to have an account taken of all such collections made by the state through its officers as detailed in the proceedings paragraph from the grants, viz., 1829 and 1848-49 A.D. to the date of suit and to all the amounts that may be found due at the foot of accounts so taken after giving credit every year to the plaintiffs for Rs. 2014/- detailed in paras 2 and 3 above and after debiting Rs. 1540-12-0 and Rs. 1525/- respectively, every year due from the plaintiffs to the States as per terms of the grants detailed above . One account may be taken in respect of the Mukta grants of Balekundri-Khurd, and of Chandur, Mavinkatte and Kednur villages. In view of the circumstances of the case, it has become necessary to ask for a declaration of the Plaintiff's right to collect the said revenues detailed above through the village officers of Chandur, Mavinkatte and Kednur and Balekundri-Khurd who should be declared to be the servants of the plaintiffs, and for an injunction to the defendants not to henceforth themselves collect the said revenues detailed above, but to direct the village Officers of the said villages of Chandur, Mavinkatte and Kednur and of Balekundri-Khurd to henceforth make all the said recoveries for and on behalf of the plaintiffs, and pay every year into the hands

of the plaintiffs the collections so made.

9. The cause of action arose in November 1945 when a demand was made in this behalf, and accounts were not rendered which is to be taken as a refusal to render accounts.

10. The suit being for a declaration and a consequential relief and accounts, the value of the subject matter of the suit for the purposes of declaration and injunction is Rs. 5/- and for the purposes of accounts is Rs. 5/- as the plaintiffs are not in a position to state the amount that may be found due to them. The balance of the Court-fee will be paid when the amount will be ascertained. Court-fee stamp of the value of Rs. 6-12-0 is presented to-day, Rs. 6-4-0 for injunction and Rs. 0-8-0 for accounts.

11. The villages of Chandur, Mavinkatte and Kednur and Balekundri-Khurd in respect of which the Hakta-Kamavishi rights have been claimed are situate in the Shahapur Taluka within the jurisdiction of this Court; the amount also has to be paid in the Shahapur Treasury. The suit being against the State, this court has jurisdiction to try this suit.

12. The plaintiffs1and 2 are the direct successors-in--title of the original grantees - Annaji Narsinha and Konherrao Annaji Deshpande. The plaintiff No. 1 is one of the two Khatedars in State Records in respect of the grant and plaintiff 2 is the only son of the other khattedar in State Records Kaher Virupax, who died on 28-10-1944. The plaintiffs are thus entitled to institute this suit. The defendant Sangli State is represented by Meherban the Divansaheb of the State, and Meherban the Chief Revenue Officer of the State. The State has merged in the Bombay Presidency in the dominion of Indian hence the Province of Bombay is brought on record.

13 A notice, dated 9-1-1946, as required by law, was given to the defendant.

14. The plaintiffs claim as follows:-

1. For a declaration that they are hereditarily entitled to:-

(a) all the revenues collected from the villages of Chandur, Mavinkatte and Kednur and of Balekundri-Khurd in the Shahapur Taluka whether

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arising out of the agricultural or non-agricultural assessments collected by the State Officers in the year of the grant and in subsequent years whether enhanced or not, in respect of Inam or Inam-Khalsa lands in the said villages.

(b) all the rents and profits due and similarly collected in respect of the villagesites or lands outside the village-site of the said villages of Chandur, Mavinkatte and Kednur and Balekundri-Khurd cultivated, uncultivated, waste, forests, or from any other source whatsoever.

(C) Any other sum, major or minor covered by the said grant and as at present detailed in the Tharav Band Register (ठरावबंद रजिस्टर) similarly recovered through the village officers of the said villages of Chandur, Mavinkatte and Kednur and of Balekundri-Khurd and realised by the State ever since the date of the grant to the date of the suit through Reosaneb Mamlatdar of Shahapur Taluka by the Agency of the village Officers of the said village; and

(d) a declaration that the village officers of the villages of Chandur, Mavinkatte and Kednur and of Balekundri-Khurd are the servants of the plaintiffs and those claiming under and through them by virtue of the said grants, and an injunction to the defendants not to henceforth themselves collect the said revenues detailed above and to direct the village officers of the said villages of Chandur, Mavinkatte and Kednur and of Balekundri-Khurd to henceforth recover the same for and on behalf of the plaintiffs, and pay the same into the hands of the plaintiffs and their successors-in-title.

(e) To have an account taken of all such collections mentioned in sub-para 1(a), b and c above so made by the officers of the State though the village Officrs of Chandur, Mavinkatte and Kednur and of Balekundri-Khurd from the year of the grants, viz., 1829 and

1848-49 A.P. respectively, th the end of suit after giving additional credit to the plaintiffs every year for Rs. 2014/- detailed in para 4 above and debiting to them every year Rs. 1540-12-0 and Rs. 1525/- respectively as detailed above; and amounts that may be found due at the foot of such accounts so taken be awarded to them with interest at 6 per cent per annum on the amount due to them.

3. All the costs of this suit.

4. Such other reliefs as are appropriate to and arise out of the circumstances of the case and the contentions of the defendant.

This suit coming on for hearing before Shri P.D. atekar, P.A. LL,B., Joint Civil Judge, S.D., Belgaum, in the presence of Shri P.G. Karguppikar and M.N. Nargundkar pleaders for the plaintiffs and Shri M.P. Patil, District Govt. Pleader for the defendant, it is hereby ordered as follows:-

" Suit is dismissed. The plaintiffs do pay the costs of the suit to defendant and bear their own costs."

Bill of Costs.

	Plffs.	Deft.
1. Stamp for plaint.	Rs. 6-4-0	-
2. Stamp for vakalat.	Rs. 3-2-0	-
3. Stamp for adjournment applications	Rs. 10-0-0	Rs. 18-12-0
4. Process fees.	Rs. 2-4-0	-
5. Pleader's fees.	Rs. 37-8-0	Rs. 18-12-0
6. Copying fees.	Rs. 9-6-0	-
	Rs. 68-10-0	Rs. 37-8-0
7. Stamp for adjournment applns. rejected.	8-2-0	15-10-0
Total Rs.	60-8-0	21-14-0

Given under my hand and the seal of the Court this 19th day of February 1954.

Sd/- P.D. Mahatekar
13-3-54
Jt. Civil Judge, S.D.,
Belgaum.

49 ✓.

Suits:

Belgaum.

For declaration that the plaintiffs are entitled to all the revenues, rents and any other sums collected by the State Officers in the year of grants and subsequent years from the villages of Chandur, Mavinkatti, Kednur and Balekundri.

GOVERNMENT OF BOMBAY
Legal Department,
Resolution No. 12130/E
Bombay Castle, 13th May 1954.

Read Government Resolution, Legal Department No.1025, dated the 16th January 1951.

Letter from the District Government Pleader, Belgaum

In the Court of the Civil Judge (Senior Division), Belgaum.	No.J-270
New C.S.No.357 of 1951. (Old Civil Suit No.38 of 1949)	dated
Madhavrao Hariharrao Deshpande and other ...Plaintiffs; vs. The State of Bombay.	the 25th March 1954

stating that the suit noted in the margin was decided by the Joint Civil Judge (Senior Division), Belgaum on the 19th February 1954, when the following order was passed:-

"Suit is dismissed. The plaintiffs do pay costs of the suit to defendant and bear their own costs."

Letter from the District Government Pleader, Belgaum No.J-270, dated the 25th March 1954, forwarding uncertified copies of the judgment and decree.

RESOLUTION: The result of the suit is recorded.

By order and in the name of the Governor of Bombay,

R T Katarki

original (R.T. Katarki)
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Belgaum,
The District Government Pleader, Belgaum.

KUP.7/6

Submitted for signature
11/5

S.S. 11/5

D.S (Civil)
~~Sol (Rev)~~

Issued 12/5

File in S. Belgaum 4/51

1/61
14/5

Sol (M.L) G.S
14/5

S. Belgaum. 4/51
15/5/54

First Appeal

No. 199 of 1954.

In the Court of the District Judge,

Belgaum.

1. Madhaorao Hariharrao Deshpande, Astekar, Inamdar, Hindu by caste, age 56, Occupation land holder, Residing at Balekundri and Shahapur, by his alienees under a deed of Release

1A. Naganath Madhaorao Deshpande, Hindu, age 30, Occupation land-holder, residing at Balekundri Khurd.

1B. Vishambhar Madhaorao Deshpande, Hindu, age 22, Occupation a student, residing at Poona.

2. Virupax Konher Deshpande, Hindu, age 30, Occupation land-holder, residing at Kacheri Galli, Shanapur.

Applts. (Ori.Plffs)

Against.

1. The State of Bombay.. Respondent (Ori.Deft).

Claim Rs ..... for Court Fee and Jurisdiction.

The plaintiffs being aggrieved by the judgment and decree passed by Shri P.D.Mahatekar, Joint Civil Judge, S.D., Belgaum in Special suit No.357 of 1952 on the 19th Feb. 1954, prefer this appeal on the following among other grounds :-

1. The decree of the Lower Court is contrary to law and the weight of evidence in the case.

2. The Lower Court did not properly appreciate the implication of the documentary evidence produced by the plaintiffs in the case.

3. The lower Court misconstrued the issues framed and came to erroneous conclusions unwarranted by law.

4. The Lower Court was wrong in holding that the plaintiffs were mere lease-holders and not the owners of the villages of Kednur, Chandur, Mavinkatte, and Balekundri Khurd, or the grantees of the land revenue thereof.

5. It was an error on the part of the lower Court to fail to take into account that whatever might have initially originated as a Mukta Kamavishi, subsequently ripened into a full-fledged grant, conferring complete ownership, subject to a payment of a fixed annual amount to the Grantor - STATE.

6. It was an error on the part of the lower Court to fail to ~~make into account that the~~ give effect to the implications of the operation of "Alienated" as defined in the Land Revenue Code.

7. The lower Court erred in not giving effect to the order of His Highness, the Rajesaheb of Sangli, dated 7-1-39, which is Ex.94 in the case.

8. The lower Court failed to see that the plaintiffs' averment in the plaint that their ancestors-in-title were constituted the owners of the said villages and were entitled to their Makta Kamavishi was not traversed by the Sangli State or by the present Defendant, the Bombay State in their respective written state-ments at Ex.19 and 54.

9. The lower Court was wrong in making out a case, which is not even suggested by the pleadings so far as the question of the plaintiffs' not being the owners of the said villages or their land revenue, is concerned.

10. It is an error on the part of the lower Court to hold that the plaintiffs' suit as regards the plaint of Bhojan Kharch and Palakhi Saranjam is not maintainable in the present form, and that they ought to have paid the court fee on the amount of the claim, thus totally ignoring the fact that under the terms of the said Tainat, the amount of Bhojan Kharch and Palakhi Saranjam was to be deducted from the amounts that were to be paid to the Deft. State under the earlier grants.

11. It was an error on the part of the lower court to have held that the plaintiffs' suit was barred by Sec.4(f) of the Bombay Revenue Jurisdiction Act.

12. It was wrong for the lower Court to hold that the suit claims were made against Land Revenue payable to the Government and hence the said Act applied.

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13. The lower Court ought to have held that the claims being in respect of amounts agreed to be paid to or retained by the grantees, the said Act did not apply, so far as Sec. 4(f) thereof was concerned.

14. It was an error on the part of the lower Court to hold that the State of Bombay is not liable for the debts of the former Chief, before merger, unless they were accepted by an agreement or subsequently recognised by the succeeding State.

15. It was wrong for the lower Court to ignore the recognition of the plaintiffs' rights, on the part of the Deft, impliedly arising out of the notice issued to them by the deft. in 1953, to show cause why the Inam village of Balekundri Khurd should not be resumed, the grants being still complied with by partial payments.

16. The lower Court failed to take into account that the rights of the plaintiffs under the grants created by the Tainat or acquired by the then existing Acts continued to be enjoyed, under the saving clauses to the sections in the Extra-territorial Provinces Act of 1948.

17. The lower Court ought not to have held that the plaintiffs' suit for accounts is untenable.

18. The lower Court erred in holding that the plaintiffs are not entitled to the declarations sought and injunctions prayed for

19. The lower Court ought to have directed by its decree that an account should be taken from the commencement of the grants or at least for 6 years next preceding the institution of the suit.

20. The lower Court was wrong in at least nor fathering the liability in question on the deft arising after merger since the grants are not as yet resumed.

21. The lower Court erred in ignoring that partial payments unto this day do constitute an acceptance by conduct of the grants of the former Ruler and renders the Deft.liable to the plaintiffs as such.

On these and other grounds which may be pressed, with the permission of the Court at the time of hearing, the Court may be

pleased to allow the appeal and set aside the decree of the lower Court with costs.

The necessary copies of the judgment and decree are produced herewith.

Belgaum.

15/4/54.

Sd/- R.G.Karguppikar,

pleader for appellants.

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Suits:
Belgaum.
For declaration that the plaintiffs are entitled to all the revenues, rents and any other sums collected by the State Officers in the year of grants and subsequent years from the villages of Chandur, Mavinkatti, Kednur and Balekundri.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 8149/E.
Bombay Castle 15.4. 1955.

Read G.R.L.D. No. 12130/E, dated the 13th May 1954.

Letter from the District Government Pleader, Belgaum, No. 253, dated the 16th March 1955 requesting Government's sanction to the defence of the Civil Appeal No. 199 of 1954 filed by the plaintiff in the suit noted in the margin.

In the Court of the Civil Judge (Senior Division), Belgaum.	
New C.S.No. 357 of 1951. (Old Civil Suit No. 38 of 1949) Madhavrao Hariharrao Deshpande and other... Plaintiffs; Vs. The State of Bombay	

RESOLUTION:- Sanction is accorded to the defence of the Civil appeal No. 199 of 1954 in the Court of District Judge, Belgaum on the lines of the brief accompanying Government Resolution, Legal Department, No. 1025, dated the 16th January 1951 and the favourable grounds contained in the judgment of the Joint Civil Judge (Senior Division) Belgaum dated the 19th February 1954.

By order and in the name of the Governor of Bombay,

D.P. Shikhare 13/4

original (D.P, SHIKHARE)
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Belgaum,
The District Government Pleader, Belgaum.

Subbd. for signature 13/4

TKM/11.4.

Issued 13/4

S. 13/4

DS (Civil)

57 4

XXXXXXXX THE EXTRA ASSISTANT JUDGE

BELGAUM.

Civil 199 54

Jt.Civil
357 51 /xx S.D.

Shri P.D. Mahatekar) Belgaum.

1. Madhavrao Harihararao Deshpande,Ashtekar, Inamdar, Hindu by caste, age 56, occ a land-holder, residing at Balekundri and Shahapur,by his alienees under a deed of rel-ase.(dead).

R.G.Karguppikar

and

1A. Nagnath Madhavrao Deshpande,Hindu, age 30, occ land-holder, residing at Balekund-i-Khurd.

D.T.Mole.

1B. Vishvambhar Madhavrao Deshpande, Hindu, age 22, occ a student, residing at Poona.

plffs.

2. Virupax Konherr Deshpande,Hindu,age 50, occ land-holder, residing at Kacheri Galli,Shahapur.

M.R. Patil, Government Pleader.

1. The State of Bombay.

deft.

This appeal has been directed against the judgment and decree of the Joint Civil Judge S.D.Belgaum (Shri P. D. Maha-tekar) dated 19th February 1954 in Civil Suit No. 357 of 1951 , dismissing the plaintiffs' suit with costs.

2. The aforesaid suit was instituted by the plaintiffs to obtain the following reliefs: (1) a declaration in regard to the plaintiffs' right to recover the entire revenue of the

villages of Chandur, Mavinkatte, Kednur and Balekundri-khurd, (2) another declaration that the village officers entrusted with the duties of collecting the revenues of these villages were the servants of the plaintiffs, (3) a perpetual injunction restraining the defendant from recovering the revenues of the aforesaid villages and directing them to instruct the village officers to hand over ~~xxxxxxxxx~~ the same to the plaintiffs, (4) an account of the collections made by the deft from the dates of the grants till the date of suit and (5) costs of the suit. The case stated in the plaint was briefly as follows. Plaintiffs were the discendants and heirs of the late Annaji Narasinha Deshpande and Konherrao Annaji Deshpande . In consideration of the services rendered by Annaji Narasinha Deshpande to the rulers of the Former Sangli State, the then ruler of that State (his Highness Chintamanrao Patwardhan) granted to him the villages of Kednur, Chandur and Mavinkatte in Shahapur taluka as Watani Makta Kamavis sometime in the year 1829 authorising him to recover the entire revenue of those three villages and to retain the same on payment of a fixed amount of Rs. 1540-12-0 to the State. A similar grant in respect of the village of Balekundri-khurd was made in favour of Konherrao Annaji sometime in the year 1848-49 authorising him to collect the entire revenues of that village on payment of a fixed sum of Rs. 1525-0-0 per year to the State. Yet another grant of Rs. 2014/- by way of Bhajan-Kharcha and Palki Sarnanjam was made in favour of Konherrao Annaji and it was directed that the aforesaid amount should be deducted from the annual payments to be made to the State in pursuance of the earlier two grants. These grants were adverted to, sustained and furthered on subsequent occasions from time to time and on 7.1.1939 the then ruler of Sangli State directed that the necessary provision for the grant in favour of the Kamavisdar was made in the budget of the State and that in terms of the first two grants it was incumbent on the Kamavisdar to collect the revenue of the Makta villages and to pay the amount fixed by the lease into the

Shahapur treasury on a date to be mutually agreed upon by the parties and if that was not being done, the existing practice should be rectified . In spite of this direction, the Mamlatdar of Shahapur by his notice dated 6.12.1939 called upon plaintiff no.1 to pay the stipulated amount into the treasury without recognising their right to deduct the amount of the grant in respect of Bhajan-Kharcha and Palki Saranjam and when the plaintiffs objected to that demand, the matter was left pending sine die and hence this suit for the aforesaid reliefs had become necessary. In para no.9 of the plaint it was stated that cause of action for the suit arose in November 1943 when the State refused to accede to the plaintiffs' demand for an account of the collections made by the State in terms of the three grants in suit.

3. This suit was originally instituted in the Court of the District Judge at Sangli on 15.6.1946. After the merger of that State in the State of Bombay, the suit came to be transferred to the Civil Judge S.D.Belgaum and numbered as Regular Civil Suit No.357 of 1951.

4. The former Sangli State represented by its Diwan and the Chief Revenue officer resisted the suit of the plaintiffs by their written-statements at Exhs.19 and 20. In the first place they contended that the villages of Kedna, Chandur, Mavinkatte and Alekundri-Khurd were not granted to the ancestors of the plaintiffs as Watan, but merely as lessees or farmers of the village revenue and those grants were Jadid grants which under the Tainat rules of the State were continuable till the lifetime of the last surviving son of Konherrao and that event having occurred after Keshavrao's death, the four villages in suit had lapsed to Government. In regard to the grant of cash allowance also the defence of Sangli State was that it was also a Jadid grant the continuance

of which was entirely in the discretion of his Highness and the same having lapsed to Government under the Talnat rules, no relief could be claimed by the plaintiffs on that score. Other contentions taken up on behalf of the State were that the suit was barred under sec. 4(a)(c)& and (f) of the Revenue Jurisdiction Act, that a suit for accounts was not maintainable in law, that the claim in respect of the period prior to 1943 was not tenable in view of the payments accepted by the holders and in any case the same was barred by limitation and that the suit was further defective for nonjoinder of the necessary parties.

5. After the merger of Sangli State, the State of Bombay was substituted as a defendant and a written-statement as per Exh.64 was filed by the District Government Pleader of Belgaum on behalf of that State in which the contentions raised on behalf of the former State were adopted and it was contended that the plaintiffs were not entitled to any of the reliefs sought. Additional contention taken on behalf of the State of Bombay was that this State could not be sued in respect of the acts committed by the former Government as under the agreement of merger the liability of the former State in respect of the grants in dispute was not undertaken by the State of Bombay.

6. On these pleadings various issues were framed for decision at Exh.63. No oral evidence was adduced by the parties and in the light of the documentary evidence placed on the record of the case, the learned trial Judge came to the conclusion that although the grants set up in the plaint were established, the same were not enforceable against the State of Bombay and in any case the claim for accounts was not maintainable in law and there was further a bar to the suit under clause (f) of section 4 of the Revenue Jurisdiction Act. The remaining contentions were negatived , but in view of the aforesaid findings on the principal issues the suit of the plaintiffs was dismissed with costs and feeling aggrieved by that decision the unsuccessful plaintiffs in the Court below have preferred this appeal.

7. On the arguments advanced at the bar the points arising for my determination in this appeal are:-

1. Whether the grants set up in the plaint are proved?
2. Whether the same are enforceable against the State of Bombay?
3. Whether the suit for accounts is maintainable in law?
4. Whether plaintiffs are entitled to the declaration claimed in clause (d) of para 14(1) of the plaint?
5. Whether the claim in respect of the four Makta villages is barred by sec. 4(f) of the Revenue Jurisdiction Act?

8. My findings on these points are:-

1. Yes.
2. No.
3. No.
4. No.
5. No.

REASONS.

9. So far as the plaintiffs' claim in respect of the villages of Chandur, Mavinkatte and Kednur are concerned we have on the record of this case a letter (Exh.86) addressed by his Highness Chintamanrao Patwardhan, the then ruler of Sangli State, to plaintiffs' predecessor Annaji Narasinha Deshpande sometime in the year 1928-29. That ~~xkax~~ letter clearly shows that these three villages were granted to Annaji Narasinha as Watani Makta Kamavis on the 25th day of March of the Sun year 1230 and according to the terms of that grant the grantee was entitled to exercise Vahivat ~~af~~ in these villages and

to recover the entire revenue thereof and to retain the same on payment of a fixed sum of Rs.1540-12-0 per year to the State. So far as the village of Balekundri-Khurd is concerned, a similar right was given to plaintiffs' predecessor Konherrao Annaji Deshpande sometime in the year 1848-49 as evidenced by the letters at Exhs. 84 and 85. Exh.84 is the letter addressed by the then ruler of the State to Konherrao and Exh.85 is the letter addressed to the officers of the State in connection with the very grant made under Exh.84. According to the terms of this grant the grantee was to recover the entire revenue of Balekundri and to retain the same on payment of a fixed sum of Rs. 1525/ per year into the treasury of the State. What was granted under the aforesaid grants was the right to recover m the entire revenue of the four villages on payment of a fixed sum of Rs. 3065-12-0 per year into the treasury of the State. In other words the four villages were leased out to the grantees for a fixed amount of Rs. 3065-12-0 per year and the State was not to claim any interest in the remaining recoveries made by the lessees. The grantees were thus constituted the farmers of village revenue and did not confer on them any proprietary interest as such in the villages in question. That this was the true position is clear from the order to which a reference has been made in paragraph 5 of the plaint. That order (Exh.94) is dated 7-1-1939 and the same has been issued by his Highness Chintamanrao Patwardhan the then Raja of Sangli to the officers of the State. While that order recognises the amounts payable to Kamavisdar under the grants evidenced by Exhs.84 to 86, it makes it clear that according to the terms of the leases granted to the Kamavisdar it was incumbent on him to collect the revenue of the Makta villages and pay the amount fixed by the lease into the treasury of the State on a date to be mutually agreed upon and directs that if the existing practice was not in accordance with the terms of the lease, the same should be rectified. In this state of evidence, the learned trial Judge was in my opinion

clearly right in holding that the grants evidenced by the letters at Exhs. 84 to 86 amount to leases and nothing more

10. So far as the claim in respect of the cash allowance is concerned, the plaintiffs have produced a letter addressed by the ruler of the State to Konherrao Annaji Deshpande on 12th of Jilhai of Suru year 1260 corresponding to 1960-61 A.D. In that letter there is a reference to the grant of a cash allowance of Rs.2014/- by way of Bhojankharcha and Palki Saranjam made by the late Appasaheb Patwardhan and it is stated that that grant was heriditory and the grantee was authorised to deduct the amount of Rs. 2014/- out of the amounts payable to the State every year in terms of the grants at Exhs. 84 to 86. The position therefore was that as a result of the letter at Exh.87, Deshpandes were entitled to deduct the amount of Rs.2014/-granted to them by way of Bhojan-Kharcha and Palki Saranjam out of the amount of Rs. 3065-12-0 only and pay the balance of Rs. 1051-12-0 only into the treasury of the State from year to year. That the grantees' right to the cash allowence of Rs.2014/- was recognised by the State till 1903 can be seen from the extracts of the State records at Exhs.89 and 93. In fact from paragraph 12 of the State's written-statement at Exh.19 it is clear that the grants in favour of Deshpandes were recognised and complied with by the State till 1943. From the Assistant Political Agent's letter (Exh.89) addressed to Konherrao on 15.6.1865 Konherrao's right to the amounts of Bhojan-Kharcha and Palki Saranjam was disputed by the State, but when the matter was taken up before the political agent, that right was conceded by the State and no action was consequently taken in the matter by the Political Agent of Karnatak Prant.

11. From the Tainat rules a copy of which has been produced on the record of this case at Exh.102, it does

appear that these grants were in the nature of Jadid grants. Although it was open to the State to resume the same at pleasure it does not appear that they were in fact resumed or treated as lapsed to Government as contended in the written statements at Exhs. 19 and 20. Even so the question remains whether these grants are lawfully enforceable against the State of Bombay after the merger of Sangli State into this State. On the side of the plaintiffs it was argued that the former Sangli State, which recovered revenue of the four villages through its own village officers contrary to the terms of the grants must be deemed to be a trustee on behalf of the plaintiffs and since the present State of Bombay had stepped into the shoes of that State, the latter must also be deemed to be a trustee for the plaintiffs and it was not therefore open to either of them to challenge the rights which the plaintiffs are claiming under the aforesaid grants. In support of this submission reliance was sought to be placed on the ruling in Tukaram Vs Sujangir (8 Bombay, 585), but that case is clearly distinguishable on facts. That was a case concerning certain Watan lands which were attached by the Peshwas in the year 1806 or 1807. That attachment continued till the year 1866, when those lands were made Khalsa or resumed by the British Government and leased out to a tenant. In the year 1871 the lands were ordered to be restored to the Watandar and after that order of restoration the plaintiffs in that case brought a suit for partition against their copareners and obtained a decree. In the execution of that decree they were obstructed by the tenant to whom the lands were leased out by the British Government. He claimed the lands as his own and the plaintiffs thereupon brought a suit against him in 1881 with a view to eject him and obtain possession of the lands. On these facts it was held that the claim of the plaintiffs was not barred inasmuch as after the attachment of the lands the Peshwas held the same as constructive trustees for the plaintiffs and when that

Government was succeeded by the British Government the same relation continued and inasmuch as the British Government was also a constructive trustee of the lands they could not put the defendant into a better position than their own. The facts of this case are altogether different. In the present case if the Sangli State collected the revenues of the villages in dispute in denial of the plaintiffs' rights, it could hardly be said that it did so as a trustee on behalf of these plaintiffs or their ancestors. The ruling in 8 Bombay cannot therefore have any application to the facts of this case. The present State of Bombay which has taken over the administration of Sangli State as a result of merger cannot also be regarded as a constructive trustee of these plaintiffs or their predecessors. The rulings in Vajesinghji Vs Secretary of State (26 Bom L.R., 1143) and Syed Asrar Ahmed Vs Durgah Committee Ajmir, (49 Bom L.R.236, P.C.) are on the other hand authorities that upon a treaty of cession inhabitant of the ceded territory can only make good in the Municipal Courts established by the new Sovereign such rights as that sovereign has recognised and not the rights enjoyed under the rule of his predecessors. The rights enjoyed by him against the former rulers can avail him nothing against the successor Government and the same cannot be asserted in the Courts of law established by that Government, except so far as they had been recognised by the new sovereign power. Recognition may be by legislation or by agreement express or implied. This being the legal position, the plaintiffs cannot possibly enforce the grants in question unless they are in a position to show that the same were either expressly or impliedly recognised by the present State of Bombay. The learned

trial Judge has found that there is no such evidence about the recognition of the plaintiffs' rights in the present case and I on the side of the appellants an attempt was made to assail his finding in this behalf by inviting a reference to the terms of the merger agreement in respect of the Deccan States and to the provisions of Clauses 7 and 8 of the notification issued by the Government of India on 27.7.1949. The actual agreement or its certified copy in regard to the merger of Sangli State has not been produced by the plaintiffs. What was pointed out to me is the form of merger agreement signed by the rulers of Gujarat and Deccan States appearing at page 183 of the White Paper on Indian States published by the Government of India (Ministery of States) in March 1950. I see nothing in that form to indicate that the rights which the plffs are claiming in this suit were either recognised by the former Sangli State or by the Government of India under the terms of merger. Clause 7(1) of the States Merger (Governer's province) order 1949 printed at page 297 of the White Paper on Indian States provides: " All liabilities in respect of such loans, guarantees, and other financial obligations of the dominion Government as arising out of the governance of a merged State, including in particular the liability for the payment of any sums to the ruler of the merged State on account of his privy purse or thm to other persons in the merged State on account of political pensions mfxtx and the like, shall, as from the appointed day, be liabilities of the absorbed province, unless the loan, guarantee or other financial obligation is relatable to central purposes". It is difficult to see how this clause can further the case of these plaintiffs. Unless it is established that under the agreement of merger the Sangli State's obligations under the grants in favour of the plaintiffs were accepted by the dominion Government, it is difficult to say that the same must be deemed to have become the liability of the State of Bombay by virtue of the provisions of clause 7(1) . Then clause 8 lays

down : " Without prejudice to the special provisions contained in Article 7 , any contract made or deemed to be made before the appointed day by, or on behalf of, the dominion for purposes connected with the governance of a merged State, shall, as from that day, have effect as if it had been made by or on behalf of, the absorbed province, unless it is wholly or in part for central purposes". This clause also is of no assistance to these plaintiffs unless it could be established that the liabilities under the grants in suit were ever accepted by the Dominion of India at the time of the merger agreement with the former Sangli State. Once it is held that there is no evidence of the recognition by the dominion of India of the obligations of the former Sangli State to the plaintiffs under the grants in suit, it follows that the present State of Bombay cannot be sued in respect of those obligations. The plaintiffs cannot therefore claim any rights against the State of Bombay on the basis of the grants made by the former rulers of the Sangli State in favour of their predecessors. Mr. Mole appearing on behalf of the plffs invited my attention to the letter (Exh.83) addressed to one of the plaintiffs by the Mamlatdar of Belgaum on 28.5.1953. In that letter it is stated that the villages of Mavinkatte, Chandur and Kednur were resumed by the State authorities in the year 1944 and the village of Balekundri also was proposed to be resumed by the present Government and hence he should appear and file his objections, if any, to the proposed resumption within a period of 7 days from the receipt of that notice. The argument founded on this notice was that it afforded evidence evidence of the present plffs' interest in the village of Balekundri as Watani Makta Kamavisdar, but I am of opinion that far from recognising

the interest of the plaintiffs the present State appears to have decided to resume the village of Balekundri and thus to extinguish the grants on which the present suit is based. I do not therefore think that the letter at Exh. 83 makes any difference to the conclusion to which I have arrived in this appeal.

11. My finding that the grants in suit are not enforceable against the state of Bombay is really sufficient to dispose of this appeal, but for the sake of completeness I would dispose of the remaining points also in brief. In the present suit the plaintiffs are claiming an account of the recoveries made by the former Sangli State in contravention of the grants evidenced by the letters atExhs. 84 to 87. But a suit of this kind is in my opinion ~~xxix~~ not maintainable in law. As pointed out in Kanailal Vs Himalal (48 Bom L.R. 795) a suit does not necessarily become a suit for accounts because the plaint asks for an account. The plaint must show that the defendant is an accounting party and that the plaintiff claims on the footing that an account has to be taken to ascertain the sum due to him. A suit for an account is a special form of suit. It does not mean every case in which accounts have to be looked into in order to ascertain the correctness or otherwise of the amount claimed by the plff. A suit for accounts only lies where the deft is ~~xxtxxxxxpplt~~ under an obligation to render accounts to the plff. There must be something more than a mere relationship of a debtor and creditor. The defendant must stand in some other relation to the plaintiff, such as that of agent or bailee, or receiver or trustee or partner or mortgagee. On the side of the plaintiffs it was suggested that the former Sangli State was a trustee recovering the revenues of the Makta villages through its revenue officers. I have already pointed out that they were not the trustees of the plaintiffs but the revenue of the villages were recovered in denial of the plaintiffs' rights under the grants. On the side of the plaintiffs reliance was sought to be placed on sec. 94 of the Indian Trusts Act of 1882. That section is in these terms.

" In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands." This section can possibly have no application to the facts of this case because it cannot by any means be said that the State of Sangli was not entitled to recover the revenues of the four villages in dispute. Under the grants in suit the right to recover the revenues of those villages was no doubt given to the plaintiffs' predecessors in title, but it was the stand of the former Sangli State that those grants had lapsed after the death of Keshavrao in 1943 and on that footing the State resumed those villages and recovered their revenues. It could not under the circumstances be said that the revenues of those villages were recovered by the State as constructive trustees for and on behalf of the plaintiffs. Illustration (b) to this section on which emphasis was sought to be placed by Mr. Mole cannot also improve the case of these plaintiffs. That illustration says: "A by mistake assumes the character of a trustee for B, and under that colour of the trust receives certain money. B may compel him to account for such monies". This illustration is obviously inapplicable to the present case because it can by no means be said that the State resumed management of the villages by mistake as a trustee for the plffs and under colour of such trust recovered the revenues in question. Once it is held that the relationship between a trustee and a cestui que trust does not exist between the parties, it follows that the suit for account is clearly unmaintainable in law. If at all the plaintiffs

succeed in showing that in contravention of the terms of the grants the former Sangli State unlawfully recovered the revenues of the villages insuit, they could at best hold the former State liable for damages, but no accounts could possibly be claimed from that State. The question is evidently of academic interest only in view of my finding that the present State of Bombay is not liable to be sued in respect of the acts of the former State. The declarations claimed in the plaint are also peculiar. While it was open to the plaintiffs to claim a declaration of their right to recover the revenues of the villages in suit and possibly an injunction restraining the former Sangli State from x interfering with their Vahivat of their villages as Makta Kavisdars, it was certainly not competent to them to claim a declaration that the present village officers of those villages are their servants. Village officers who are employed and paid by the State could hardly be declared to be the servants of the plaintiffs. The declaration claimed inxx paragraph 14(1)(d) of the plaint could not therefore be granted to the plaintiffs even if they were to be found to be entitled to any of the reliefs sought.

12. This leaves the question whether there is a bar to the present suit under clause (f) of sec.4 of the Revenue Jurisdiction Act. That section provides that subject to the exception hereinafter appearing, no Civil Court shall exercise jurisdiction in respect of claims against the Crown to receive payments charged on or payable out of the land revenue. The argument of the learned Government pleader was that the cases contemplated by the proviso to sec.4 do not arise in this case and the claim in respect of the four Makta villages apparently comes within the mischief of clause 5 because it is the claim of the plaintiffs that they are entitled to the revenues of the four villages in suit on payment of the stipulated fixed amount of Rs. 3065-12-0 and even out of that fixed amount they are entitled to deduct a sum of Rs.2014/-

by way of Bhojan Kharcha and Palki Sarnanjam. I do not however think that this contention is correct. In Secretary of State for India Vs Narayanrao Vinchurkar, (38 Bom L.R. 1339) it has been held that a suit by a Saranjamdar to recover sums of Sin Chillar wrongly deducted by Government from the land revenue payable to him is not barred by sec. 4(f) of the Revenue Jurisdiction act, 1876. The chillar fund may no doubt be said to be payable out of the land revenue; but clause (f) refers to claims against Government to receive payments payable out of the land revenue, that is, payable out of the land revenue which is itself payable to Government. This clause cannot have been intended to bar a suit by an alienee of the land revenue to recover sums wrongly deducted from the land revenue payable to him. Now so far as the present case is concerned, the plaintiffs are not disputing the right of the Sangli State to the fixed amount of land revenue payable to the State according to the terms of the grants at Exhs. 84 to 86. What the plaintiffs claim is the surplus revenue which the State may be found to have recovered from these villages. According to the terms of the grants that surplus revenue was clearly alienated to the plaintiffs and they were entitled to retain the same and according to the terms of Exh.83 they were further entitled to set off the amount of Bhojan Kharcha and Palki Sarnanjam against the stipulated amount of Rs. 3065-12-0. The plaintiffs are not therefore claiming the land-revenue payable to the State. Since this is not a claim for land revenue payable to the State but for the land revenue to which they claimed to be entitled under the grants, it cannot possibly be said that this suit is barred by the Revenue Jurisdiction Act.

13. My findings on the main issues are however fatal to the claim of the plaintiffs. The decree passed by the learned trial Judge must therefore be upheld and this appeal dismissed with costs.

ORDER.

Trial Court's decree is hereby confirmed and the appeal is dismissed with costs.

13th January 1956.

Extra Assistant Judge, Belgaum.

Suits:
Belgaum.
For declaration that the plaintiffs are entitled to all the revenues, rents and any other sums collected by the State Officers in the year of grants and subsequent years from the villages of Chandur, Mavinkatti, Kednur and Balekundri.

Government of Bombay
Legal Department,
Resolution No. 5725/E
Sachivalaya, Bombay, 9th March 1956.

Read Government Resolution, Legal Department No. 8149/E

In the Court of the Civil Judge (Senior Division), Belgaum. New C.S. No.357 of 1951 (Old Civil Suit No.38 of 1949).	dated the 15th April 1955. Letter from
Madhavrao Hariharrao Deshpande and other.. Plaintiffs; vs The State of Bombay ... Defendant.	the District Government Pleader, Belgaum No.63

dated the 20th January 1956, stating that the Civil Appeal No.199 of 1954 in the suit noted in the margin was decided by the Extra Assistant Judge Belgaum on the 13th January 1956, when the following order was passed:-

"Trial Court's decree is hereby confirmed and the appeal is dismissed with costs. "

Letter from the District Government Pleader, Belgaum No.63, dated the 20th January 1956, forwarding uncertified copies of the judgment and decree.

RESOLUTION: The result of the appeal is recorded.

By order and in the name of the Governor of Bombay,

original
D.P.SHIKHARE,
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Belgaum,
The District Government Pleader, Belgaum.

Scrutinised by Sd/-
Subdt 9/3
OS (Civil)

BD/8.3

OS 8/5 9/7